

1003337 [2010] RRTA 782 (11 August 2010)

DECISION RECORD

RRT CASE NUMBER: 1003337

DIAC REFERENCE: CLF2009/140334

COUNTRY OF REFERENCE: Egypt

TRIBUNAL MEMBER: Patricia Leehy

DATE: 11 August 2010

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Egypt, arrived in Australia [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] [in] 2005 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] October 2009. The delegate decided to refuse to grant the visa [in] April 2010 and notified the applicant of the decision and his review rights by letter dated [the same day].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] May 2010 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
 - owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal on [two dates in] July 2010 to give evidence and present arguments. The applicant was represented in relation to the review by his registered migration agent.

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21. According to his Protection Visa application, the applicant is a man who was born in [Town A], Egypt, on [date deleted: s.431(2)]. He is Muslim and unmarried. His father is deceased. His mother, a brother and sister are currently resident in Egypt, he has two brothers who are resident in the USA, and one brother resident in Holland. The applicant says that he lived from October 1999 to July 2002 [in] Cairo, and from July 2002 until he left for Australia in September 2005 he lived in [Town A]. He says that he attended [Town A] High School from 1983 to 1986 and then from 1986 to 1988 he attended the [education provider deleted: s.431(2)] in Alexandria. He says that from 1992 to 2005 he was a Travel Agency manager and was self-employed. The applicant says that he left Egypt legally on a Student Visa and that he had difficulties in obtaining a travel document. He gives no details of any difficulties. The applicant attached a copy of his passport to his application.
22. The applicant submitted a statement of claims with his Protection Visa application. The claims are summarised below:
 - The applicant suffered great hardship dealing with the internal security force in Egypt;
 - He was first arrested when he was working as a taxi driver in [Town A] in 1995-99; at that time taxi drivers were expected to provide transport to police who raided people's houses to make arrests; the shift was from 10 pm to 4 am and the drivers did not receive any pay or compensation; when the applicant raised his concerns he was arrested and beaten before he was released;
 - The applicant has been the target of constant persecution since his first arrest;
 - While the applicant was not a member of the Muslim Brotherhood, he associated with some of its members, and therefore automatically became a danger to the state;
 - The internal forces do not like the applicant's liberal and open-minded views, which has led to his being beaten countless times;

- The political situation in Egypt is very strict and the applicant is always being investigated with no prior notice or reason; the authorities barge into his home and search his belongings; they pretended to be clients on his bus in order to investigate him; he felt his privacy was constantly being invaded;
 - The applicant has been arrested more than 5 times; on at least two occasions the applicant was detained in the Internal Security centre with no explanation and without any court hearing; on two occasions the applicant spent more than 5 months in detention, and the second time he was “almost sure I was dead”; it seemed he was in detention because of who he was rather than because of what he had done;
 - The applicant became sick of the constant struggle to lead a normal life; he met a friend who wanted to flee the country and he applied for a student visa;
 - The applicant took so long to apply for protection because he had very little idea of immigration policy; when he arrived he realised that the international student situation was “very tough and demanding”; he did not know that being on a student visa did not give him permanent residence; he was reluctant to apply for protection because he was afraid of being refused and forced to leave the sanctuary Australia provided;
 - The applicant says that he cannot stand the thought of going back to Egypt; he is sure things will not have changed there and that the Internal Security will continue to find and watch him; he fears for his life, especially when he is detained for months with no one to help him;
 - The applicant was held at the airport in Egypt for hours before they cleared him to board the plane to Australia; he is afraid he would not be able to go out again.
23. Departmental records indicate that the applicant’s Student Visa was cancelled [in] December 2005, due to his non-attendance at his course of study. A report from the Australian Federal Police indicated that the applicant committed a number of [offences deleted: s.431(2)] in Australia.
24. The applicant was interviewed by the Department [in] March 2010. The interview was conducted in English. His evidence at interview is summarised below:
- The applicant had no difficulties in leaving Egypt; they were glad to get rid of him;
 - It was clarified that the applicant’s full name is as it appears on his passport, rather than in his Protection Visa application where his family name was omitted;
 - The applicant has travelled only to Australia on the current passport;
 - The applicant found the course he was enrolled in in Australia was a waste of time, in that it would not lead to permanent residency; he had worked in Europe for several years; he chose to leave Egypt to get rid of the authorities’ pursuit of him;

- The applicant had a certificate gained in 1985-86 in [details deleted s.431(2)]; he lived in Europe from 1988 to 1992; he mainly worked in [details deleted];
- The applicant was asked about his statement that he was a travel agent for a period; he said he had a minibus in about 1994-95 which allowed him to carry 25-30 passengers; he had registered as a travel agent for the purposes of running the minibus;
- The applicant had no problems getting a passport because he had no criminal offences; his problems were all with Internal Security, which is concerned with political and religious matters;
- The applicant did two years of national service;
- The applicant was asked how often he was arrested and detained by security forces; he said that if a young man seems religious he is watched by internal security, picked up randomly and arrested; he was picked up many times by internal security; sometimes he was picked up from home and sometimes in the street and questioned;
- The applicant said he was driving in [Town A] and he had a minor accident in 1995 with two internal security officers who were on a motorcycle; they beat him on the street and then that night they contacted him to come to the office for questioning; he spent two nights there; this happened several times because he had a record with them;
- The applicant in 1996 was trying to help with religious pamphlets young people who might have lost their way; the authorities kept him in detention for two nights and sent him to court; this was the wrong court and he was sent back to detention and then sent to the appropriate civil court; after a psychiatric evaluation he was told by the judge not to do this kind of thing again and released without charge;
- The applicant was asked to clarify how often he was picked up in random searches as distinct from kept in detention for a period;
- The applicant said he would often be picked up by the traffic authority when he was driving his minibus; they would take his licence regularly to check it and then usually give it back when he went to the traffic office; they would take most of the drivers and keep them for a night or two; when they saw the applicant was a religious person they would keep him longer;
- The applicant said that he was picked up twice at home;
- The applicant said that often the police would take their vehicles to use them for missions to arrest people; they never paid him for using his minibus, which they did twice a week; he complained about this; it was put to the applicant that this affected the whole minibus industry, but they all kept quiet about it, the applicant said that he could not;
- The applicant was asked when the longest detention was; he said it was 2003; he said that his bus was unique because as a Muslim he used to try to encourage

people in their religion; he had some small religious books for his passengers which he tied to the windows; he had cassettes which held recorded prayers; he had no political materials; his bus was stopped several times because he had loudspeakers which were broadcasting religious material to his passengers; he felt he had the right to do this; it was put to the applicant that it appeared that he was disturbing the peace by making loud noises which would bring him to the attention of the police; he said this was not the case;

- The applicant had to report to police in Cairo once a month since 1994;
- The applicant was asked again about the incident of his arrest in 2003; he said that it was after a private detective got into his bus and saw the religious materials; he was told he had to report; he was told to bring the materials he had on the bus; he spent a few hours waiting to be called; he thought it would be a routine matter; after he made a routine report he was taken away to the internal security office; he was blindfolded and was taken downstairs; he spent a few hours in a room with 20-25 others; they offered them food which the applicant rejected;
- The applicant was then questioned in a room; he had been picked up randomly in the street and his questioners did not know him; this was the first time he was tortured; he was beaten continuously for three hours while they were questioning him; there were two people, one behind him and the other asking questions; he had been through all this before and he thought he could put up with it; the questioner was very angry with him, that he had refused the food that was offered; he was beating him very roughly;
- The applicant was then taken in a big truck with another 6-8 officers to his place of residence in Cairo; they thought he was associated with others and wanted to close down all these activities; the applicant was tied up and blindfolded; he lived in share accommodation in Cairo because his main home was elsewhere; there was only one person there who was a student; had there been more, they would have looked more like Muslim Brothers;
- It was put to the applicant that the government might have been over-zealous in pursuing suspected terrorists, but it was not unusual;
- The applicant said that he was held for 5 months in detention; he said that after they had searched the house and found leaflets which he had copied in the past, they took him back to the same place, two levels underground; they ignored him there; he was kept in a room with some 50 people; it was like a transit place, where people left for elsewhere; most of the people in there were connected with religious opposition groups;
- The applicant was not questioned during this time; they told him nothing; in the last month he was transferred back home, and he spent a week in the local office station, where they knew him; the officer told him he had to have someone come to get him; the applicant said he had no-one to collect him; he called his mother to pick him up; he was afraid of what might happen to him or his family if anything happened again;

- On his release in 2003, he stopped the cassettes and leaflets in his bus for a while; he was randomly checked when he was at the airport waiting for his brother the following year;
- The applicant had to report every month; he had to wait for hours for someone to speak to him for a few minutes;
- The applicant said that it was only in [Town A] that the police took over his van for their use; in Cairo they did not take his bus; he mainly worked in Cairo in 1999-2005;
- The local police used his bus in [Town A] from 1994 to 1997;
- The applicant said that he was worried that if he returned to Egypt, he would be detained by the police again; he had seen people kept indefinitely in detention there; he was worried about his family; the families never knew where they were;
- The applicant said his mother told him that it was a connection of the family who was very highly placed who was responsible for his release.

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25. The applicant submitted no additional information with his application to the Tribunal for review. He attached a copy of the Delegate's decision to his review application.

Hearing [in] July 2010

26. The applicant and his adviser presented to the Tribunal for a hearing [in] July 2010. The applicant brought with him his current passport. The applicant's adviser presented a written submission to the Tribunal, the text of which appears below:

My aim in writing is to clarify for the member in my professional capacity the horrendous circumstances of this applicant which had robbed him of the ability to live a dignified and peaceful life, free from persecution and constant harassment. What my client faces can clearly be classified as a 'well-founded fear' of being persecuted for the sole reason of his religious convictions.

As submitted previously to the department, my client has lived and worked in various European countries for around five years. There, he was living under the security, protection and freedom from harassment and government intervention in his life. Upon returning to Egypt, the applicant sought employment in various institutions and various professions. However, due to the strikingly high unemployment rate of Egypt, he found it rather troublesome to find a job. He was thus self-employed, driving passengers around in [Town A] and thereafter in Cairo where he obtained a minivan for the same purpose.

At this time, my client had various personal experiences which led him to become more religiously devout and observant. He found that rather increasingly he was finding solace and security in the Islamic religious teachings and had thus become more devoted. This trend was observed by those around him and it seemed to give him a positive drive force and meaning to his life.

It must be noted that due to the post-colonial nature of Egyptian society, religion has come to assume a rather awkward situation in society. There are the majority who retain religion in the personal and individualistic spheres of their private life and continue in their day to day activities in a rather secular way. Religious observance for them assumes the form of social festivities and occasions.

Then there are others, who have chosen to adopt religious adherence as political and social tools for change. This group is vocally in opposition to the government and its varying policies. They usually fit under the Muslim Brotherhood banner and its varying charitable, social and welfare branches.

My client however, was in a rather unique situation whereby he did not fit into either category. He was never officially a member of the Brotherhood nor did he participate in their activities. However he was not religiously complacent either. It can be said that his religious fervency lead him to form his own branch of activism in which he saw it as a personal obligation to propagate his beliefs, without fitting under any established category.

Thus, [the applicant] used his van as the vehicle for his propagation efforts. During his daily transport rounds, he would distribute religious books and pamphlets to those who boarded, and he would also play various audio cassettes on the sound system. These constituted various religious admonitions and called upon people to become more religious and adopt Islam as a way of life in every matter they faced. Such admonitions were made on a theological basis and within a religious discourse. Many people heeded his advice and their lives were consequently altered.

Accordingly, such actions lead to friction with the authorities who are well known to look upon such activities with disdain and disapproval. They saw him as an intermediary and an indirect agent in the process for grassroots change and activism which they clearly loathe. It was seen that once the community was made more aware and religious, then they would look down upon the dictatorial and corrupt institutions in place and fight for change. This has been the trend with the Muslim Brotherhood who has proliferated at an exponential rate on grassroots levels.

As a result, in the eyes of the authority, [the applicant], although a lone trooper, was a piece in the wider trend of opposition and growing religiosity, which must be repressed and stopped. As stated, the Intelligence Services (hence after IS), would frequently send undercover agents into the van to monitor and repress his religious activities. They would rummage through the material he propagated and although there were no direct political association found, his religious fervency and zeal to help others become more religious, was a direct alarm to them. It is widely accepted, that in most of the Middle Eastern countries -especially Egypt - the government frowns upon religious adherence and persecutes those whom it sees as agents for its proliferation. This has been documented by the UN, Human Rights Watch and Amnesty International in various reports.

Moreover, as my client expressed previously another factor that aggravated this friction, was the issue with the use of the van by the officers in awkward hours without any pay. This, although seemingly peripheral, was also a major point in this case. The use and misuse of the van cannot be seen in isolation as facilitating the performance of basic civil duties by an under funded system, but rather an aggravating factor in the uneasy relationship which already existed between [the applicant] and the authorities. As stated, his vocal complaints about the practice, while others refrained from comment, caused a notable impact in the industry.

Thus, when [the applicant] was consequently arrested, fined and released various times, these were direct messages sent to him to cease his religious activities, under the guise of the usual administrative procedures which the sector he was working in apparently had to face.

The utter idiocy and arbitrary nature IS's dealings was revealed in 1996. Here, [the applicant] was arrested for distributing these religious flyers and was asked to attend the office to report. The civil judge sent him to a doctor for psychiatric evaluation. This seems to be a rather foolish thing to do, but it goes to show the extent to which the authorities were willing to go through to have [the applicant] charged with anything, to arrest and incarcerate him, in an attempt to extinguish his religious activities. It was revealed later that [the applicant] was of a sound mind and he was released.

Again, it seems that the judge was bewildered as to the unique role that [the applicant] came to assume. He neither did fit into the complacent nor the politically aligned categories, but seemed to wage a religious reformation on his own. Such activity where a person bears on their shoulders, the burden of religious change, was previously unfounded.

The events reached to their tempestuous climax in 2003 when [the applicant] was arrested, interrogated, tortured and held without an official charge for almost five months. He was informed that this was due to the religious sermons he played in his van and the religious material he distributed. He was questioned for more than three hours, beaten and just left for the remaining amount of time without further actions. This time was rather horrendous for him as it revealed the discriminatory and barbaric power of the authorities. They put his life on hold - literally- without a legal charge and did not pursue the legal avenue of the courts.

To humiliate him further, although over [age], upon release, they asked his mother to pick him up from custody, and taking into account the social and cultural norms of a patriarchal society such as Egypt, this was a slap in the face of his dignity and independence.

At this point, [the applicant] truly feared for his life. He could not follow his religious observance and voice his concerns as any dignified human being has the right to. [The applicant] was only conveying, in a private and peaceful matter, his convictions to others, and did not participate in any act of active governmental opposition nor encouraged anarchy or chaos, to require such a harsh punishment.

[The applicant] felt his life constrained and he felt rather suffocated in his own country. His movement and actions were monitored and he was not given any respite or a moment's privacy. He was humiliated and his dignity and self worth crushed. Most of all, he was denied the basic right to exercise his religious convictions as any human is entitled to, but rather victimized and persecuted for holding them.

[The applicant's] only escape at that time was to flee in any way he could, out of the tyrannical and oppressive country. Surely, such a dictatorial government such as Egypt does not allow information about refugee and humanitarian options to be easily obtainable by its citizens. Thus, [the applicant] couldn't risk jeopardizing his only hope of leaving, by applying onshore, risk rejection, and the persecution if the authorities ever found out he was attempting to leave.

Thus, [the applicant's] only option to flee the persecution was to come on a student visa to Australia and seek refuge within its safe shores. As stated, [the applicant]

thought that this visa will allow him to flee permanently and that he would finally be free from discriminatory harassment and arbitrary persecution due to his religious beliefs.

[The applicant] has settled in this country, and has been a hardworking and committed member of his community. Every waking day he counts his blessings for having the privilege to live in such a harmonious country, free from religious harassment and persecution.

The situation in Egypt has exponentially grown worse since [the applicant] left, and he truly fears that the situation he will have to face upon return will be more horrendous than what it was when he left. The rise of the opposition in Egypt has meant an iron fist crackdown on anyone who espouses any religious convictions that differ from that of the secular-leaning authorities.

Moreover, [the applicant] has previous first hand experience and was previously persecuted at the hands of authorities, so a threat for him is live and immanent and not mere speculation.

I thus humbly ask you to consider my client in such a light and appreciate the great fear and anxiety he harbors at the moment. [The applicant] was only beginning to forget the pain and suffering he faced in Egypt, and the rejection of his visa have resurrected genuine concerns and fear in him. He can't even lead a normal life at the moment as he is constantly worried about going back to the suffocating conditions of Egypt.

27. The text of the submission has been quoted in full because the very discursive nature of the applicant's oral evidence has, in the Tribunal's view, disadvantaged him, and his adviser's more succinct presentation is useful.
28. Although the applicant had indicated on his review application form to the Tribunal that he did not wish to have the services of an interpreter, he told the Tribunal that he would prefer to proceed with an interpreter in case he had difficulty in understanding and being understood. The hearing was therefore adjourned until [a later date in] July 2010.

Hearing [later in] July 2010

29. The applicant and his adviser attended the Tribunal hearing. At the hearing the applicant said that he had had another passport prior to his current one. He said that he had travelled out of Egypt on that passport. In 1989 he had gone to Yugoslavia, but was forced to return to Egypt. He did not know why this was the case. He had then gone to Austria where he stayed for [period deleted: s.431(2)], then to Holland where he had stayed for about [period deleted], and then he lived in Italy for about [period deleted].
30. The applicant said that his sister, brother and mother were living in Egypt, and that he had two brothers who were resident in America. They had gone there in 1996 and 1989 seeking better economic circumstances. He has one brother in Holland. He speaks to his family in Egypt about once a month. They have not said anything to him which he considers relevant to his Protection Visa application.
31. The applicant said that he lived from 1992 on his return to Egypt until 1998 in the town of [Town A]. Initially he lived in his mother's house, but after three years he lived by himself. He drove a minivan in [Town A]. At least twice police picked him up randomly on the street

to ask questions and check his licence. In 1995 he was driving his van and two plain clothes security officers on a motorbike attempted to overtake him. He hit the bike by accident and the security officers stopped his van and beat him for about 15 minutes. They told him to come to the internal security office and he went there the following day and was kept there for two hours being asked questions.

32. The applicant was asked whether he had had any other problems. He said that after 1995, every day there would be an office on the street collecting the licences of drivers of minivans. They were asked to come to the security office at 9 pm after their shift finished. Two or three times a week in the period from 1995 to 1998, the applicant would be sent with security officers to local villages and forced to wait while the officers performed arrests and the like. The applicant complained about the loss of time and the loss of income, because the drivers were not paid. He was kept in the security forces' office on about 10 occasions. On those occasions he was blindfolded, insulted and kept overnight in the office, handcuffed to bars.
33. The applicant said that he got a bigger van, a bus, and moved to Cairo in 1998. He also wanted to avoid the harassment in [Town A] by moving to a bigger place. There were members of his family who lived in Cairo, but he did not live with them. He shared accommodation with students. The applicant said that his bus was used for local transport. He did not work for a company. He said that he had to report to the security office in Cairo once a month, because he had been required to report in [Town A]. The security office in [Town A] required him to do this. The applicant said that [Town A] is about [distance deleted: s.431(2)] from Cairo, and he used to go back and forth to visit his family from time to time. When asked what happened when he reported to security, he said that they would just ask him questions for 5 minutes, but he had to wait 2-3 hours each time. Apart from having to report he had no problems at this time.
34. The applicant said that he wished to explain something. The message of Islam requires him to preach Islam to others. The applicant said that he was not a religious person at first when he was living overseas. It was when he was in Italy that he met some young Muslim men who told him he should stop leading a sinful life and pray with them. Since then he became gradually more committed to his religion by praying and reading the Koran. He used to attend lectures by imams in mosques in [Town A] and Cairo. He didn't go to hear particular people, but attended to those who seemed to be saying useful things.
35. The applicant said that he was financially secure in Cairo. The encounters with security did not have an adverse effect on his income. He started thinking about doing something to help others, particularly youth who seemed to have a lot of problems. He thought that they could be helped by prayer and practising their religion. He got leaflets printed which contained religious information, such as verses from the Koran. He indicated at the hearing what the leaflets looked like, having an Islamic calendar on one side, and religious messages on the other. He distributed these pamphlets to mosques, but later had something different on his bus for people. The pamphlets did not have the applicant's name or phone number on them. There was nothing political in them. The applicant said that one time the Sheriff in [Town A] told him that it was not a good idea to be distributing leaflets. He was asked by the Tribunal whether he paid any attention to what he said. He said that he did not, because he did not care. He had an obligation to his religion. It was put to him that in many countries the authorities do not like individuals preaching about their religious or political views to other people, and often stop them from doing so. He said that this might be all right for politics, but that there should be no restriction on religion. He said that he had a library on his bus. He was asked when he started this.

36. The applicant said that when he was in [Town A] he would be sent to the Internal Security building several times because he distributed pamphlets. They would send him on to the police station when they found that the pamphlets had nothing to do with politics, and they sent him to see the doctor. He was asked about the visits to the doctor. He said that they sent him to the doctor because he was doing these unusual things like distributing religious pamphlets, so they sent him to the doctor in case he was crazy, but the doctor said that he was normal and sent him back. The applicant said that when he was picked up for distributing pamphlets he was sometimes kept for 2 to 3 days. He was asked whether the security asked him whether he belonged to any group or organisation. He said that they did not do this until later. He was not accused of belonging to a group, but they did not like him distributing religious material. He said that he later met someone who was detained for a month for no other reason than having an Islamic library.
37. The applicant was asked to describe the religious material he had had on his bus for people in Cairo. He said that he had a smaller bus then moved on to a bigger bus. He got the bigger bus about 2001-2. He decided that instead of going to people, he would get them to come to him. He would buy booklets from Islamic bookshops which contained religious information. The applicant did not compile them, he bought them. He described how he would put these booklets in small boxes between the seats, of which there were more than 30. The applicant said that he would buy booklets for distribution free to people. At the time he was making 1000 Egyptian pounds a week at a period when a government employee was making 300 a month. The booklets costs him very little in relation to what he was earning. The booklets were not exclusively about religion, some were about cooking, some about fruit, some about Ramadan, about the prophets.
38. When asked whether he had any other religious material on the bus, he said that there were things to discourage people from smoking, and he also had a cassette which he would play on the bus. He used only one cassette and it was a cassette of Sheikh Mohamed Hussein explaining the importance of prayer. This Sheikh is very important and well-respected and has good relations with the government. The applicant said that he did not play the cassette loudly, but everyone on the bus could hear it. He said that on one occasion an undercover internal security officer got on the bus, and told him to hand over the cassette and his driver's licence. This was in about 2003. It was late at night, and the applicant was told to come into the office in the city centre the next day because he was spreading Islam against their wishes. He went to the office and was kept there nearly all day and asked questions about himself. He was then taken blindfolded to an underground room and kept there for 2-3 hours. They did not tell him why they were doing this. He was then taken to another room for questioning. He was held from behind and someone in front of him asked questions. He was beaten and kicked for more than two hours. He was then taken from the city centre to the outskirts of the city near the airport where he lived with students of the local university. No-one was there apart from one student. The applicant's house and carport were searched and Islamic literature was taken away. They wanted to check where he lived and who he associated with. He was taken in a big truck and there was also a small van. The main question asked was who he was associated with.
39. The applicant was asked what he knew about the Muslim Brotherhood. According to the country information available to the Tribunal, students were drawn to the Brotherhood. The information also indicated that at this time in Egypt the Muslim Brotherhood was increasing its influence, and in the 2005 elections gained a number of seats. The government was extremely concerned about the Brotherhood and its supporters. The applicant said that he did

know about the Muslim Brotherhood and he now supports their views strongly. He believed that they spoke their truth. However at that time, though he knew that the Brotherhood existed, he did not seek to find out more about them. He did not care about politics, and he felt that the Muslim Brotherhood mixed religion with politics. He carried out his own activities to promote Islam. The applicant was asked whether he knew anyone associated with the Brotherhood, or whether he himself associated with the Brotherhood. He said that he did not know anyone from the Brotherhood. He was asked about the students he lived with and he said that they were not interested in politics. They were moderates who attended the Islamic university. It was put to the applicant that it was difficult to understand why he was detained for 5 months when he had no involvement with politics. He said that he had his own religious library on his bus, he was doing things of his own free will and they did not like this because in future he might act against the government. The point was to scare him off before he did this.

40. The applicant was asked whether he was questioned every day while he was in detention. He said that he was questioned from time to time about his affiliations with groups, and about his views on the government. He said that there were two rooms in which about 50-70 people were held in transit to other places. Everyone there was held because of political reasons, and people came and went. He talked with the detainees over the period, but the effect was not to make him more political but to make him more careful, because he saw how people were kept for long periods for doing very little. The applicant said that from time to time he was kicked and hit casually by the guards. He said that after 4 months he was called, and he was transferred to [Town A] in an Internal Security truck. He spent a few days in the building in [Town A], then transferred to the local police station for 48 hours. It was only when he was sent to the police station that he was aware that he was going to be released. The staff at [Town A] knew the applicant. The sheriff there told him that someone had to pick him up. He could not find anyone to collect him and finally had to get his mother to come for him. He was released to [Town A] in about July or August of 2003.
41. After a short adjournment, the applicant was asked whether he had been questioned about the Muslim Brotherhood directly. He said that he had not been, though they had asked whether he was connected with any groups. They would also ask him frequently about why he went to Europe and what he was doing in Europe. He said that he realised when they asked these questions that if he had been connected with anyone he would be in gaol for the rest of his life.
42. The applicant said that after his release he went back to Cairo and continued to drive his bus for a year. He took everything related to religious material out of the bus. At that time he did not have it in mind to leave Egypt. Up to 6 months before he left Egypt, he was intending to get married, buy a flat and settle in Cairo. However, he was still having problems with the internal security. On one occasion, his brother came to visit from the US. The applicant went to meet him at the airport and he was kept in an office there for 2-3 hours and questioned. His brother had already gone home by the time he got out. He was insulted by a boy whose father was a policeman when he was driving. He had to keep reporting to Internal Security in Cairo. When he moved between Cairo and [Town A] he would be harassed because he has a beard like the Muslim Brotherhood members.
43. The applicant said he started to think about leaving Egypt to avoid harassment. He met a student who had residence in Germany, and then went to see a friend who knew how to get residence in Germany. He was told that he had to be a very good German speaker in order to do this. The applicant is not very fluent in German. He began to worry what might happen

to his family if he continued in Egypt. It was suggested to the applicant by a contact that because he knew English well he might go to Australia. He therefore got a visa for Australia.

44. The applicant said that when he came to Australia he thought that the student visa would give him residence. He was told he had to do a diploma to get a skill which was in demand, but he did not have the money to do that, to get the required diploma. It was put to the applicant at the hearing that he did not apply for protection for nearly five years after he arrived. He said he did not at first know about protection visas, but he then thought that if he applied and failed he would be sent back to Egypt and he was afraid of it. He said that if he had had \$20,000 he would have done the required diplomas, but he did not have the money. The applicant said that it was not until he met his current adviser that he thought he could successfully apply for protection.
45. The applicant was asked whether he attended a particular mosque in Sydney. He said that he prayed everywhere five times a day and went to various mosques in Sydney. He was asked whether anyone could support his claim to be a committed Muslim. He said that there were a number of people who could do that.
46. When asked what he feared if he returned to Egypt, the applicant said that he would be questioned at the airport. They might let him go for a while, but then the same thing would start again, of being harassed and questioned on a regular basis.
47. The applicant was asked whether he needed medical treatment after his detention because of any injuries or mistreatment he had received. He said that he was physically tough. The applicant was asked whether he experienced any psychological problems as a result of detention. He said that he was very concerned after his experiences in detention and talking to people there because he realised that if he had any connection with a group he would be in great trouble. He was asked how he thought he might have changed because of detention. He said that he was greatly changed because he was very fearful. He was asked whether his family were concerned about him. He said his family thought he was a trouble-maker. The applicant said that he was not really close to any of his family. He was asked whether there was anyone in Egypt who could write something about his experiences there. It was put to him that because he has given different details about his experiences over time it would be helpful to have some supporting evidence for his claims.
48. The applicant was asked to provide a Statutory Declaration from a person from the Muslim community in Australia attesting to his commitment as a Muslim, and a statement from a member of his family or a friend in Egypt about his experiences there. It was agreed that statements would be submitted within 2 weeks.
49. The applicant's adviser said that he himself had seen the applicant many times praying at the [suburb deleted] mosque before the applicant became a client.
50. It was put to the applicant that the major difficulty that the Tribunal had with his claims was that there appeared to be no obvious reason why he should have been harassed and detained for 5 months. He was asked why he thought the authorities harassed him. He said that there were many divisions in Egypt. There was envy between rich and poor. Once an officer in [Town A] expressed surprise at how much he was earning, and he had a similar experience in Cairo. He thought the main thing was that he looked like a Muslim Brotherhood member. The applicant said that his mother asked him a hundred times to shave his beard. He said that

he refused to bend to their opinions. He had been a different person who was irreligious, but then he became committed to his religion and had to keep to his opinions.

51. [In] August 2010, the Tribunal received from the applicant's adviser a Statutory Declaration from [Mr A], a prominent religious cleric in the community in Sydney, and a letter from the applicant's sister, [Mrs B] in Arabic. Mail receipts for this letter have also been attached. The adviser states that the letter from the sister is being translated, but gives a summary of its content.
52. The Statutory Declaration from [Mr A] was signed [in] August 2010 at [suburb deleted] and states that [Mr A] has known the applicant for four years, during which time he has witnessed the applicant's "unparalleled passion and zeal for his religion and personal beliefs". [Mr A] states that the applicant is a "strict adherent of the Islamic faith" and a spiritual person. He goes on to state that the applicant is a frequent attendee at all the religious services and activities which take place in the local Muslim community. He says he has not known the applicant to "miss one important prayer service in all this time." He then states:

More strikingly, [the applicant] is rather different from other regular adherents due to his passion and desire to inform and educate others about the treasures and benefits he perceives he has received from leading a spiritual life. [The applicant] constantly calls and propagates to others to reap the benefits of a religious centred life.
53. [Mr A] says that the applicant is not associated with any sect or political group overseas or in Australia and says that he "will face threats, persecution, unnecessary disturbance and possible incarceration if he were ever to return to Egypt for the sole reason of his religious convictions and activities".
54. In his summary of the content of the letter from the applicant's sister, the adviser states that the sister "briefly outlines the family situation of the [applicant's family] and the predicament [the applicant] finds himself in due to his religious fervency. She outlines that during the time he spent in Egypt, [the applicant] was subject to constant harassment and persecution due to his religious appearance, beliefs and his propagation efforts. She strongly believes that [the applicant] should be given protection as there is no way for him to go back and live overseas."

Country Information

55. The US State Department's Country Report for 2009, released 11 March 2010, states in part:

The government's respect for human rights remained poor, and serious abuses continued in many areas. The government limited citizens' right to change their government and continued a state of emergency that has been in place almost continuously since 1967 Security forces used unwarranted lethal force and tortured and abused prisoners and detainees, in most cases with impunity. Prison and detention center conditions were poor. Security forces arbitrarily arrested and detained individuals, in some cases for political purposes, and kept them in prolonged pretrial detention...

Political Prisoners and Detainees

The government held detainees, including many MB activists, for several weeks to several months or longer and did not permit international humanitarian organizations access to political prisoners.

The government arrested and detained hundreds of MB members and supporters without formal charge or trial. According to the government, it arrested MB members because of their "illegitimate actions and communications with foreign parties relevant to security and public order." According to public statements by the MB, approximately 217 of their leaders and members remained in prison at year's end.

56. The official English language website of the Muslim Brotherhood gives a history of the group since its founding by Hassan Al Banna in 1928(ikhwanweb.com/SectionsPage.asp?SectionID=115). Its current leader is Mohammed Badie, and his new deputy is Mahmoud Ezzat. Both were elected in January 2010 (see for example, *The Examiner* of 8 February 2010, "Egypt arrests 3 top Muslim Brotherhood leaders", www.examiner.com/printa-2464399~Egypt_arrests-3-top-Muslim_Brotherhood_leaders.html)
57. The International Crisis Group (ICG) reports that the surprise success of the MB in the 2005 parliamentary elections "sent shockwaves through Egypt's political system" and the regime has engaged in a renewed crackdown on the movement since. According to ICG, the security crackdown occurs most especially around election times or anytime when the group engages in public protests. Large-scale public protests on various issues by MB activists continue to be reported. An article in the Spring 2009 edition of *The Middle East Report (MER)* reports that on 9 January 2009 "some 200,000 Muslim Brothers staged over 90 demonstrations" around Egypt to protest the long-standing international blockade of Gaza. The demonstrations resulted again in large-scale arrests. According to the *MER* report, the authorities pre-empted demonstrations in Cairo with a massive security presence in the capital. The report states that "[i]n the rest of the country, the regime allowed the demonstrations, but then carried out mass arrests of the participants. No group felt the regime's hammer blow as acutely as the Society of Muslim Brothers. According to the group's official website, nearly 1,700 Brothers were arrested" (International Crisis Group 2008, *Egypt's Muslim Brothers: Confrontation or Integration?*, Middle East/North Africa Report no.76, 18 June; Stacher, J. 2009, 'The Brothers and the Wars', *Middle East Report*, vol. 250, Spring <http://www.merip.org/mer/mer250/stacher.html>).
58. In *The Examiner* of 8 February 2010, quoted above at para 45, the article states that the police arrested three of the Brotherhood's top leaders, including the newly appointed deputy, on 8 February 2010. A Brotherhood spokesman said that the arrests would not alter the Brotherhood's plans to field candidates in the October 2010 parliamentary elections in Egypt. Presidential elections are scheduled for 2011. BBC News of 8 February 2010 also reported the arrest of senior Brotherhood figures, and said that the total number of those arrested was 13. It quotes a spokesman for the Muslim Brotherhood as saying that "the arrests were an attempt by the authorities to thwart its preparations for elections later in the year." (news.bbc.co.uk/2/hi/middle_east/8503695.htm)
59. The Us State Department's *International Religious Freedom Report 2009* (published October 2009) for Egypt includes the following:

The Government outlawed the Muslim Brotherhood--an Islamist party that operates missionary, charitable, and political activities that threaten NDP rule--in 1954 but has tolerated its operations with varying levels of interference. Muslim Brothers speak openly and publicly about their views and identify themselves as members of the organization, although they remain subject to arbitrary detention and pressure from the Government.

The Government at times prosecutes members of religious groups whose practices are deemed to deviate from mainstream Islamic beliefs and whose activities are alleged to jeopardize communal harmony... (emphasis added)

An estimated several thousand persons remained imprisoned during the reporting period because of alleged support for or membership in Islamist groups seeking to overthrow the Government. The Government stated that these persons were in detention because of membership in or activities on behalf of violent extremist groups, without regard to their religious affiliation. Internal security services monitor groups and individuals suspected of involvement in or planning for extremist activity. Internal security agencies regularly detain such persons, and the ongoing state of emergency allows them to renew periods of "administrative detention" indefinitely.

FINDINGS AND REASONS

60. On the evidence before it, including the evidence of the applicant's passport which he brought with him to the Tribunal hearing, the Tribunal accepts that he is an Egyptian national.
61. The Tribunal formed the opinion that the applicant is a highly volatile and somewhat eccentric individual who has very strong views and a strong commitment to his religion. His manner of giving evidence at the Tribunal hearing was voluble and at times lacking in focus and coherence, but in the Tribunal's view the applicant is an intelligent and rational individual who was able to give evidence and present arguments in support of his claims. The Tribunal formed the view that the applicant was a credible witness. His essential claims have remained consistent over time, and he very readily provided details of his claims when asked. The Tribunal also accepts as credible the supporting evidence given by a Muslim cleric in Sydney who knows the applicant, and by his sister in Egypt (as summarised by the applicant's adviser).
62. The Tribunal accepts that the applicant during his time travelling out of Egypt, when he was in Italy in about 1992, became interested in Islam, and since then has become increasingly committed to his religion and to sharing his religious views.
63. The Tribunal accepts that the applicant came to the attention of the local police and security in [Town A], his home town, as a result of a number of clashes between himself and security and police officers between 1992 and 1998. The most serious of these conflicts was in relation to his complaints about taxi drivers being required to assist the security forces in their raids on surrounding areas in order to perform searches and arrests. He complained to security about the loss of time and income this entailed for himself as a taxi driver. As a result of his antagonistic attitude to the authorities in his home town, he was regularly harassed by being questioned, sometimes kept overnight in detention, and having to report to the authorities on a regular basis. The Tribunal has considered the account of this harassment by the authorities carefully, but is not satisfied that the harassment was at that time for a Convention reason. While it might be argued that the harassment was inflicted on the applicant for reasons of his imputed political opinion as an opponent of the government, it is the Tribunal's view that this argument would overstate the authorities' motivation at this stage in reacting to what they appeared to perceive as continuing provocative and troublesome behaviour on the part of the applicant.
64. The Tribunal accepts that the applicant moved to Cairo in about 1998 in part to escape harassment by the local authorities, but also because he wished to expand his driving

business. It accepts that he was required to report regularly to the authorities in Cairo because of the requirements of the authorities in [Town A]. It further accepts that this continued reporting requirement constituted harassment of the applicant.

65. The Tribunal accepts that the applicant was successful in his bus business in Cairo, and that he devoted more time and attention to his religion. In particular it accepts that he undertook to encourage adherence to Islam by his passengers, and that in order to do this he made religious material available to passengers, and played religious sermons on his bus. The Tribunal accepts that in about 2003 he was questioned, had his home searched, and was subsequently detained for a period of five months because of his activities in propagating Islam on his bus. It accepts that he suffered some physical mistreatment when being questioned by security, in addition to the deprivation of liberty for a substantial period of time. It accepts that he was questioned about his affiliation to political and religious groups. It accepts that the applicant was not in fact a supporter of any of these groups, though he supports the religious ideas of the Muslim Brotherhood. The Tribunal accepts the applicant's account of his experiences subsequent to his release from detention. It accepts that the authorities continued to harass the applicant by, for example, questioning him at length when he went to the airport to meet his brother returning from the USA, and by having to report to the authorities in Cairo on a regular basis.
66. On the evidence before it, the Tribunal accepts that the applicant suffered harm which was serious enough to amount to persecution in a Convention sense from 2003 in Cairo at the hands of the internal security authorities. The harm included a substantial period of detention, as well as continuing harassment by being questioned on a regular basis over a period of several years. The Tribunal further accepts that this harm was inflicted on the applicant for reason of his religious opinion, real or imputed, as an Islamist or Islamic extremist, and for his political opinion, real or imputed, as opposed to the Egyptian authorities.
67. The Tribunal has considered whether there is a real chance that the applicant will be persecuted if he returns to Egypt in the foreseeable future. A primary consideration for the Tribunal is the applicant's personality, which is opinionated and outspoken, as well as his commitment to his own interpretation of religion, a characteristic confirmed by the evidence of his witnesses. These characteristics, as well as a long history of harassment by the authorities in Egypt, at least some of which (for example, his five-month detention by security) is likely to have been recorded and documented, have given him a profile which is likely to draw adverse attention to him by the authorities, in the Tribunal's view.
68. In making these findings, the Tribunal has taken into account the country information set out above. While the authorities have especially targetted the Muslim Brotherhood, and have taken and continue to take repressive measures against their members and supporters, the independent information also makes it clear, in the Tribunal's view, that the authorities are intolerant of those whose religious practices appear to "deviate from mainstream Islamic beliefs and whose activities are alleged to jeopardize communal harmony" (para 58). In addition, the authorities are said to arbitrarily arrest and detain individuals whom they may keep in prolonged detention (para 54). The applicant's bearded appearance, as well as his outspoken commitment to and propagation of Islam, makes it likely, in the Tribunal's view, that the authorities would impute him with support for the Muslim Brotherhood, hundreds of whose members and supporters continue to be arrested and detained (para 54).

69. The Tribunal has considered the fact that the applicant had been in Australia for over four years before he applied for protection, together with his explanation for the delay in applying for a Protection Visa. It accepts as plausible that the applicant initially thought that the completion of a course would allow him to obtain permanent residence. However, he abandoned this course very quickly after his arrival. He says that he did not know how he could apply for protection, and was also then worried that he might apply, be refused and be sent back to Egypt. The Tribunal is not able to make a finding on the reason for the applicant's delay in applying for protection. However, it accepts that he continued to be afraid of what might happen to him if he returned to Egypt, and does not believe that the delay indicated, in his case, that he did not have a fear of being persecuted in Egypt.
70. The Tribunal finds that the applicant would not be able to avoid persecution by relocating to an area of Egypt outside Cairo or [Town A] for the reasons indicated above, namely his own commitment to Islam and his urge to propagate his views, and his profile with the Egyptian authorities because of his detention and the duration of their harassment of him. It is satisfied that there is a real chance that he will be persecuted in Egypt within the foreseeable future for reason of his religion and political views, real or imputed. It is satisfied that the applicant has a well-founded fear of persecution in Egypt within the meaning of the Convention.

CONCLUSIONS

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

DECISION

72. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*

Sealing Officer's I.D. PRMHSE