

1113271 [2012] RRTA 950 (23 October 2012)

DECISION RECORD

RRT CASE NUMBER:	1113271
DIAC REFERENCE(S):	CLF2010/167216
COUNTRY OF REFERENCE:	Egypt
TRIBUNAL MEMBER:	Giles Short
DATE:	23 October 2012
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies paragraph 36(2)(a) of the Migration Act.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is a review of a decision made by a delegate of the Minister for Immigration and Citizenship on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] November 2011 refusing an application by the applicant for a Protection (Class XA) visa. The applicant was notified of the decision under cover of a letter dated [in] November 2011 and the application for review was lodged with the Tribunal [in] December 2011. I am satisfied that the Tribunal has jurisdiction to review the decision.
2. The applicant is a citizen of Egypt. He arrived in Australia [in] 2007 as a student and he applied for a Protection (Class XA) visa [in] December 2010.

RELEVANT LAW

3. In accordance with section 65 of the *Migration Act 1958* (the Act), the Minister may only grant a visa if the Minister is satisfied that the criteria prescribed for that visa by the Act and the Migration Regulations 1994 (the Regulations) have been satisfied. The criteria for the grant of a Protection (Class XA) visa are set out in section 36 of the Act and Part 866 of Schedule 2 to the Regulations. Subsection 36(2) of the Act provides that:

‘(2) A criterion for a protection visa is that the applicant for the visa is:

- (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol; or
- (aa) a non citizen in Australia (other than a non citizen mentioned in paragraph (a)) 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 non citizen being removed from Australia to a receiving country, there is a real risk that the non citizen will suffer significant harm; or
- (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa; or
- (c) a non citizen in Australia who is a member of the same family unit as a non citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa.’

Refugee criterion

4. Subsection 5(1) of the Act defines the ‘Refugees Convention’ for the purposes of the Act as ‘the Convention relating to the Status of Refugees done at Geneva on 28 July 1951’ and the

'Refugees Protocol' as 'the Protocol relating to the Status of Refugees done at New York on 31 January 1967'. Australia is a party to the Convention and the Protocol and therefore generally speaking has protection obligations to persons defined as refugees for the purposes of those international instruments.

5. Article 1A(2) of the Convention as amended by the Protocol relevantly defines a 'refugee' as a 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. The time at which this definition must be satisfied is the date of the decision on the application: *Minister for Immigration and Ethnic Affairs v Singh* (1997) 72 FCR 288.
7. The definition contains four key elements. First, the applicant must be outside his or her country of nationality. Secondly, the applicant must fear 'persecution'. Subsection 91R(1) of the Act states that, in order to come within the definition in Article 1A(2), the persecution which a person fears must involve 'serious harm' to the person and 'systematic and discriminatory conduct'. Subsection 91R(2) states that 'serious harm' includes a reference to any of the following:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
8. In requiring that 'persecution' must involve 'systematic and discriminatory conduct' subsection 91R(1) reflects observations made by the Australian courts to the effect that the notion of persecution involves selective harassment of a person as an individual or as a member of a group subjected to such harassment (*Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 per Mason CJ at 388, McHugh J at 429). Justice McHugh went on to observe in *Chan*, at 430, that it was not a necessary element of the concept of 'persecution' that an individual be the victim of a series of acts:

'A single act of oppression may suffice. As long as the person is threatened with harm and that harm can be seen as part of a course of systematic conduct directed for a Convention reason against that person as an individual or as a member of a class, he or she is "being persecuted" for the purposes of the Convention.'
9. 'Systematic conduct' is used in this context not in the sense of methodical or organised conduct but rather in the sense of conduct that is not random but deliberate, premeditated or intentional, such that it can be described as selective harassment which discriminates against the person concerned for a Convention reason: see *Minister for Immigration and Multicultural Affairs v Haji Ibrahim* (2000) 204 CLR 1 at [89] - [100] per McHugh J

(dissenting on other grounds). The Australian courts have also observed that, in order to constitute ‘persecution’ for the purposes of the Convention, the threat of harm to a person:

‘need not be the product of any policy of the government of the person’s country of nationality. It may be enough, depending on the circumstances, that the government has failed or is unable to protect the person in question from persecution’ (per McHugh J in *Chan* at 430; see also *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225 per Brennan CJ at 233, McHugh J at 258)

10. Thirdly, the applicant must fear persecution ‘for reasons of race, religion, nationality, membership of a particular social group or political opinion’ Subsection 91R(1) of the Act provides that Article 1A(2) does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless ‘that reason is the essential and significant reason, or those reasons are the essential and significant reasons, for the persecution’ It should be remembered, however, that, as the Australian courts have observed, persons may be persecuted for attributes they are perceived to have or opinions or beliefs they are perceived to hold, irrespective of whether they actually possess those attributes or hold those opinions or beliefs: see *Chan* per Mason CJ at 390, Gaudron J at 416, McHugh J at 433; *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 570-571 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ.
11. Fourthly, the applicant must have a ‘well-founded’ fear of persecution for one of the Convention reasons. Dawson J said in *Chan* at 396 that this element contains both a subjective and an objective requirement:

‘There must be a state of mind - fear of being persecuted - and a basis - well-founded - for that fear. Whilst there must be fear of being persecuted, it must not all be in the mind; there must be a sufficient foundation for that fear.’
12. A fear will be ‘well-founded’ if there is a ‘real chance’ that the person will be persecuted for one of the Convention reasons if he or she returns to his or her country of nationality: *Chan* per Mason CJ at 389, Dawson J at 398, Toohey J at 407, McHugh J at 429. A fear will be ‘well-founded’ in this sense even though the possibility of the persecution occurring is well below 50 per cent but:

‘no fear can be well-founded for the purpose of the Convention unless the evidence indicates a real ground for believing that the applicant for refugee status is at risk of persecution. A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation.’ (see *Guo*, referred to above, at 572 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ)

Complementary protection criterion

13. An applicant for a protection visa who does not meet the refugee criterion in paragraph 36(2)(a) of the Act may nevertheless meet the complementary protection criterion in paragraph 36(2)(aa) of the Act, set out above. ‘Significant harm’ for the purposes of that definition is exhaustively defined in subsection 36(2A) of the Act: see subsection 5(1) of the Act. A person will suffer ‘significant harm’ if they will be arbitrarily deprived of their life, if the death penalty will be carried out on them or if they will be subjected to ‘torture’ or to ‘cruel or inhuman treatment or punishment’ or to ‘degrading treatment or punishment’. The expressions ‘torture’, ‘cruel or inhuman treatment or punishment’ and ‘degrading treatment or punishment’ are further defined in subsection 5(1) of the Act.

CLAIMS AND EVIDENCE

14. The Tribunal has before it the Department's file CLF2010/167216 relating to the applicant. The applicant appeared before the Tribunal [in] April 2012 to give evidence and present arguments. The Tribunal was assisted by an interpreter in the Arabic and English languages. The applicant was represented by [name and business name deleted: s.431(2)], a solicitor and registered migration agent. [The migration agent] attended the hearing.

The applicant's original application

15. The applicant is aged [in his twenties]. In his original application he said that he had completed [details of education deleted: s.431(2)]. He said, however, that [for a number of years before] he had left Egypt [in] 2007 he had lived in [Town 1] in the Minya governorate in Egypt. He said that he had never worked in Egypt.
16. In a statement accompanying his original application (headed 'Statutory Declaration' but not in the correct form) the applicant said that [in] 2004 he had converted to the 'Korani faith'. He said that he had been introduced to the 'Korani faith' by a fellow student when he had been in his last year at university. He said that his conversion had remained secret and only fellow members of the faith had been aware of his conversion. He said that his father and his siblings were still not aware of his conversion and they would cause him serious harm if they were to become aware of it.
17. The applicant said that if he returned to Egypt he would not be able to practise his faith openly and that he would need to practise it in a covert manner as he had in the past. However he said that his faith would surely be exposed if he returned to Egypt, mainly by his mode of prayer and the time of the day at which he prayed. He said that he was unable to rely on the authorities for protection because it was a well-established fact that the authorities were openly hostile to 'Koransians'. He said that members of his faith were persecuted by the authorities and fundamentalist Muslims and that they were at real risk of serious harm from radical Islamists, especially members of the Muslim Brotherhood who he said sought to establish a Muslim state in Egypt.

The applicant's evidence at the Departmental interview

18. The applicant was interviewed by the primary decision-maker in relation to his application [in] November 2011. The applicant said that he had read and understood the claims in his statement and that there was nothing he wished to correct. He produced an email message dated [also in] November 2011 from [Mr A] of [Quranic Organisation B] in [Country 2], stating that the applicant was 'one of our Quranists in Australia', a copy of a letter of the same date from [Mr A] saying that the applicant was an active Quranist and that his life would be in real danger if he returned to Egypt and two character references in identical terms (both saying that the writers had noticed that the applicant's religious beliefs differed from the Sunnis and that he 'follows the quranic curriculum').
19. The applicant also produced a letter dated [in] October 2011 from a psychologist who said that he had seen the applicant that day, that the applicant had presented with symptoms of anxiety and depression, that the psychologist's diagnosis was 'Adjustment Disorder with Mixed Anxiety and Depressed Mood' and that the applicant would benefit from treatment. The applicant also produced copies of two email messages from [Mr A] in Arabic and numerous pages printed from the internet in Arabic.

20. The applicant said that [Mr A] was '[prominent] in our Quranic faith' and he had sent him an email message asking his opinion about the new government in Egypt. He said that usually he contacted [Mr A] by telephone. He said that he had first telephoned [Mr A] in [2007] and that he had first sent him an email message about one year previously. He said, however, that the email address he had been using had been stolen so he had not been able to use it any more. He said that he had first sent him an email message from his current email address only about two weeks previously. He said that he did not have any bill that proved that he had telephoned [Mr A] because he had used a prepaid phone.
21. The applicant said that he lived with [friends] at the address in Australia which he had given in his application. He said that he had been living there for a year and a half. He said that he had met one of them at a station and this person had introduced him to the others. He said that they were all practising Sunni Muslims. He said that they prayed five times a day, they read the Koran and they followed the Hadiths and the Sunnah whereas 'we follow only the Koran' He said that they did not know that he only followed the Koran. He said that they sometimes attended a mosque. He said that he had attended a mosque in Sydney once with them, one month after he had started living at the address.
22. The applicant said that he had always lived at his family's home in Egypt. He said that his mother had died [a number of years ago]. He said that his father had remarried and that there were also children from this marriage whom he had not mentioned in his application. He said that he was in contact with his family by telephone. He said that they were Sunni Muslims, Salafists and fanatics. He then said that they were not Salafists but they were fanatics. He said that he called them fanatics because if he had wanted to hang out with his friends they would have asked him why he was going out with them and what he was going to do. He said that his father had also hit him if he did something wrong. He said that his father had been in Saudi Arabia which was why he was strict. He said that he had been given no freedom to state his opinion.
23. The applicant said that his family prayed five times a day and they went for Friday prayers. He said that they had also attended some seminars and speeches. The applicant said that he had lived at home when he had been at university as well. He confirmed that he claimed that [in] 2004 he had become a Quranist. He said that before that date he had been a Sunni Muslim and had practised his faith in the same way as his parents. He said that he had attended the mosque and had prayed with his family. He said that they had grown up in a village and they had just gone to the closest mosque.
24. The applicant said that he had come to Australia because he had wanted to complete his studies and to be away from his father, to have his freedom. He said that he had come here to complete [studies] but he had only completed six months of [one course] and then he had changed to [another]. He said that then his visa had been cancelled so he had only completed a [diploma]. [Further information regarding the applicant's student visa deleted: s.431(2).]
25. The applicant said that before he had left Egypt he had had a problem with his father because he had wanted to get engaged to a girl but his father had refused. He said that the girl had married someone else. He said that he had never been arrested or detained in Egypt. He said that he knew that some friends who had been following the same faith had been detained. He then said that these were not friends but he knew of one man, Reda Abdel Rahman Ali, who he said had been detained in October 2006 because he was following the

Quranic faith. He said that this man had been charged with causing harm to the religion and to the government. He said that the Egyptian Government did not acknowledge this faith.

26. The applicant said that he had converted to the Quranic faith [in] 2004. He said that he had had an issue with his father relating to listening to songs and his father had hit him. He said that he had told a friend about this and his friend had told him that there was no verse in the Koran that said that it was prohibited to listen to songs. He said that his friend had been a Quranist and had given him some books to read to deepen his knowledge. He said that all the Muslim sects agreed on the Koran but they differed on the Sunnah and the Hadiths.
27. The applicant said that all the books which his friend had given him [were] about songs and singers, ways of prayer and fasting and things related to the religion. He the said that his friend had in fact given him one book which had covered all these topics. He said that Sunni Muslims had to go to the mosque to pray but Quranists could pray at home. He said that Quranists believed that women had to be dressed differently but their heads could be uncovered and that they believed that women could be imams.
28. The applicant said that he had discussed these matters with some other people in meetings but he said that he had not attended these meetings often because he had been afraid of his father who had always been asking him where he had been going. He said that he had only attended these meetings once a fortnight. He said that he had decided to become a Quranist because it was the right thing and it was the only thing based on truth. He said that it was the right thing because everybody agreed on the Koran.
29. The applicant said that after he had become a Quranist (which he said had been one and a half months after [a certain month in] 2004, after he had read the book his friend had given him) he had sometimes pretended to be tired in order to avoid going to the mosque. He said, however, that he had continued to attend the mosque with his family. He said that his family had not been aware that he had been using different words during the prayers. He said that he had avoided his Sunni friends but he said that nobody had realised that he had become a Quranist. He said that later on he had thought about going to a country where there was freedom like Australia or Europe.
30. The applicant said that [Mr A] had introduced him to some other Quranists in Australia but they were frightened of being reported. He said that they had met twice, in a coffee shop, but that the last time had been about six months previously. He said that they also spoke on the telephone. He said that he wanted to create an association for Quranists in Australia but nobody else wanted to do this because they were all in fear. They feared that their parents in Egypt would know about this. He said that the people with whom he lived were not aware that he was a Quranist because when he talked to [Mr A] he did so outside his home. He said that all their contact was through the internet.
31. The primary decision-maker put to the applicant that all the evidence he had provided appeared to have been generated after he had lodged his application for a protection visa. The applicant said that he always talked to [Mr A] but not by email. The primary decision-maker put to the applicant that he had arrived in Australia [in] 2007 but he had not applied for a protection visa until December 2010. He put to the applicant that this might suggest that he did not have a genuine fear of returning to Egypt. The applicant said that he was frightened of returning to Egypt. He said that when he had first arrived he had had a student visa and he had had religious freedom. He said that after his visa had been cancelled he had started to

panic. He said that now the government in Egypt had changed and the Salafists and the Sunnis could do whatever they wanted to do. He said that he might die there.

32. The applicant's representative submitted that if the applicant attended a mosque there was no visible distinction between the Quranist faith and the Sunni faith. He submitted that in the applicant's heart and mind the prayers were different. In terms of the delay in making the application the applicant's representative submitted that it had only been after the applicant had become illegal that he had had to apply for a protection visa. He submitted that the applicant had had contact with [Mr A] for four years but that he could only produce recent emails.
33. The applicant said that he was very afraid of returning to Egypt because the state security there came and grabbed people from their homes as had happened with Reda Abdel Rahman Ali. He said that no one knew where he was or if he was alive or dead.

The applicant's evidence at the hearing before me

34. At the hearing before me the applicant asked that I take evidence by telephone from [Mr A] in [Country 2]. [Mr A] confirmed that he was [active within Quranic Organisation B] in [Country 2]. [Detailed information regarding Mr A deleted: s.431(2).] He said that every now and then the applicant sent him emails about the Koran and other religious *fatwas* (decrees or verdicts). [Further information regarding Mr A deleted: s.431(2).] He said that because the Quranists were a persecuted denomination they had no other means of communication except the internet.
35. [Mr A] said that as far as he remembered the applicant had first contacted him more than two years previously. He said that their contact was both by email and by telephone. I noted that [on the organisation's website, the applicant was mentioned for his help to the organisation]. [Mr A] said that he could not remember every message because there were [many], but he remembered the applicant's questions and his comments on religious verdicts because they reached him personally.
36. I noted that [Mr A] had referred to the persecution of Quranists and I invited him to comment on the situation of Quranists in Egypt at the moment. [Mr A] said that the persecution of Quranists had started in 1980. He said that he himself had been [imprisoned] for being a Quranist, in [the 1980s]. He said that there had been three campaigns or waves of arrests against Quranists in Egypt. He said that during the second campaign he had managed to escape to [Country 2], and after that there had been two more campaigns. He said that the persecution had come from the Mubarak Government as well as from the Muslim Brotherhood and other fundamentalists on the street.
37. [Mr A] said that the persecution of Quranists was more severe now in Egypt than before and more dangerous, not just because the Muslim Brotherhood had come to power in Egypt but also because their grip on the streets was stronger. I asked him what he knew of what was happening to individual Quranists in Egypt at the moment. [Mr A] said that his family members who were [Quranists] were living in hiding in fear for their lives. He said that most religious and political groups in Egypt could practise their beliefs publicly except for the Quranists who were not allowed to practise their faith publicly.
38. The applicant's representative asked [Mr A] if he believed that the applicant was a genuine adherent of the Quranist faith. [Mr A] said that he might not know the applicant

personally but he could tell by the messages and the contact he had had with the applicant. He said that the type of questions the applicant asked and the comments he made confirmed that the applicant was a Quranist.

39. The applicant also asked that I take evidence from [Mr C] but he said that he thought that [Mr C] would be asleep at the time of the hearing because he was working [at nights]. It was agreed that the applicant's representative would arrange for the witness to provide a written statement. [In] April 2012 the applicant's representative faxed to the Tribunal a one sentence statement from [Mr C] declaring that he had known the applicant for seven months and that he could confirm that, like himself, the applicant was a devout follower of the Quranist faith.
40. The applicant said that he had been assisted by his representative in preparing his original application to the Department for a protection visa and that all the answers in that application were correct and complete. He said that the statement accompanying that application had been read back to him and that it accurately reflected his claims for refugee status.
41. The applicant said that he had lived in [Town 2] in the Gharbia governorate when he had been growing up in Egypt. He said that he had continued living there until he had left Egypt. I noted that in his application it had said that he had lived in [Town 1] in the Minya governorate in Egypt. The applicant said that this was not correct. He confirmed that he had studied [at university]. He said that he had travelled to the university every day from his home which had taken around one hour.
42. The applicant said that after he had completed his studies he had looked for work as a teacher for a year. He said that after this year he had had to go back to the army conscription unit but he had postponed his military service for three years. He said that it had been very hard to get a job in Egypt so he had chosen to migrate to Australia. He said that his family had paid for him to come to Australia to study. He said that he had ceased studying in Australia in around 2010. He referred to the fact that his visa had been cancelled in 2009.
43. I asked the applicant what he had told his family he was doing in Australia now. He said that he had told them that he was having trouble with his visa status and that he was trying to get a visa again. He said that they were not supporting him like before because the living conditions in Egypt were harder now. He said that he was being supported by friends here. He added that he had [siblings] in [Europe] who sent money to his family in Egypt and that his father was supporting him from this money. He said that they supported each other as a family.
44. The applicant confirmed that all his family were Sunni Muslims. He said that they attended all the prayers in the mosque and they had the same rules and regulations and teachings as any other Sunni denomination. He said that they were very strict in their faith. He said that one of his brothers had a beard like a strict Muslim and that his father had worked for a while in Saudi Arabia. He said that his father was very strict and did not allow any discussion about religion.
45. I put to the applicant that I found his evidence that his father was very strict difficult to reconcile with the fact that he had [siblings] living in [Europe] and that his father had sent him to study in Australia. The applicant said that their income in Egypt had been very low so one of the family had had to travel abroad to support the family. He said that it was very hard

to make a living now in Egypt and there was no employment there. I put to the applicant that if his father was as strict as he said his father would surely have sent him to somewhere like Saudi Arabia to study rather than sending him to a place like Australia. The applicant said that his father had not interfered with where he had wanted to travel or to migrate. He said that it would have been very hard for him to travel to Saudi Arabia because most people there were strict Sunnis. He said that his father's purpose had been to help him to get married and to establish a life here and to help his father to support the family too.

46. I referred to the applicant's evidence that he had become a Quranist [in] 2004 and I asked him when he had first heard about the Quranist community. The applicant said that he had been introduced to the Quranist denomination through a colleague at the university. He said that during this time he had been having trouble with his father about listening to music. He confirmed that his friend at university had told him that there was nothing in the Koran about listening to music or songs. He confirmed that he claimed that his friend had given him a book of verdicts and religious teachings. He said that his friend had told him about the Quranist denomination and [Mr A].
47. I asked the applicant if this had all been before [a given month in] 2004. The applicant said that his friend had given him the book in [that month] and after that he had started studying. He said that after one and a half months he had decided to join the Quranist denomination. He said that in the beginning his friend had been cautious about telling him that he was a Quranist for fear that he might inform someone. He said that he himself had not told anyone in his family or his friends about the Quranist denomination except for the group of Quranists with whom he used to interact.
48. The applicant said that the book he had mentioned collected [certain Quranist] opinions about religion and it referred to other books if you wanted to read more. He said that after he had decided to join the Quranist denomination his religious practice had been exactly the same. He said that the only difference was that they had one verse of the Koran which they had to mention after the *shahada*. He said that Quranists did not need to attend group prayers at the mosque.
49. The applicant confirmed that he claimed that after he had become a Quranist he had continued living at his home until he had left Egypt and that his family did not know that he had become a Quranist. I put to him that he had said in his statement that if he were to return to Egypt the fact that he was a Quranist would be exposed by his mode of prayer and the time of day at which he prayed. The applicant said that it would be revealed if he went back to Egypt because there was no freedom of religion in Egypt: he could not tell anyone that he was a Quranist.
50. I put to the applicant that he was saying that for about two and a half years he had continued living with his family and practising the Quranist faith but they had never realised that he was a Quranist. The applicant said that there had still been differences of opinion between him and them, especially with his father being a strict Sunni. He said that he had not been able to express any opinion in front of his father because his father would have resorted to physical abuse, beating him physically if he said anything which his father did not like. He said that the difference in prayers was not a difference in practices but in the prayers themselves so if he stood next to a Muslim and prayed he would do the same things which the Muslim did except that there was a bit of difference in the prayers he said. He said that the Muslim would not even notice. He said that he did not want to go back to Egypt and live in

secrecy like before. He said that it was his right to express his beliefs as a Quranist without the fear of being killed or persecuted.

51. I asked the applicant how he had been doing this since he had been in Australia. The applicant said that here he tried to interact with people and he tried to express his opinion and his faith with certain people if they were open-minded enough to accept that. He said that if they were strict or mainstream Muslims or if there was any fear of misunderstanding or any aggressive attitude towards him he would not talk about it in front of them.
52. The applicant confirmed that he lived with friends in a shared house in Sydney and that these friends were Sunni Muslims. I asked him if he had talked to these friends about his religion. The applicant said that he had not told them because some of them had relatives who came from the same neighbourhood in Egypt and they might leak this news to his family and cause him trouble. I asked the applicant who he had talked to about his religion in Australia. The applicant said that he had talked to some Lebanese people. He said that he played soccer with these people and some of them were close friends so he could talk to them about his opinions without mentioning that he was a Quranist.
53. I referred to the applicant's evidence that he had met with other Quranists in Egypt. The applicant said that they had met at a friend's house and it had been a small group, no more than ten. He said that they had not gathered in big groups to avoid attention. He said that they had met once a week but he himself had only attended once a month. He said that his friend would tell him what went on in these meetings. He said that he had been scared of his father because it was hard to hide these things. He said that the meetings had been in a [certain locality], around one hour by public transport from his home.
54. The applicant said that he had met with other Quranists on two or three occasions in Australia but he said that they were all afraid of being exposed to their Egyptian community, especially about news leaking out to the Egyptian Embassy and eventually to the Egyptian Government and news leaking out to their families in Egypt. He said that they had discussed establishing a [formal group] but everything here was very cautiously managed.
55. The applicant said that one of the Quranists whom he had met here was [Mr C] [details deleted: s.431(2)]. He said that [Mr A] had sent him contact numbers for some other Quranists here. I noted that [Mr C] had not claimed that he had been in contact with [Mr A] in [information before the Tribunal]. The applicant repeated that [Mr A] had sent him [Mr C]'s contact number.
56. I noted that the applicant was saying that his contact with the Quranists was very secret because he was afraid that people would find out or that his family would find out but at the Departmental interview he had [details relating to a website message deleted: s.431(2)]. The applicant confirmed that this was the case. I put to him that this suggested that his involvement had been [made public on Quranic Organisation B's website]. The applicant said that there were thousands of people with his name and he was in Australia.
57. I put to the applicant that the message in question gave his full name and said that he was [involved in a] Quranic group in [Australia]. The applicant said that he did not see why this was of significance because there were many people who had the same name and there was no mention in this message of his direct contact number or his address. He said that being in Australia there was no fear of the family and the mainstream Sunni Muslims for being a Quranist here. He said that this website was mostly visited by the Quranists

themselves and that the opponents of the Quranists who visited the website to attack the Quranists were mostly from Egypt so there was no real fear of persecution from anyone here in Australia.

58. I put to the applicant that he had told me that he could not tell the people with whom he lived that he was a Quranist because he was afraid that the news would get back to his family in Egypt. The applicant said that the website was only for Quranists and these people were Sunnis so they did not know about this website. He said that even if they got into this website they would not find this message because it had been a long time now and all these messages would have disappeared or would have been deleted.
59. I put to the applicant that I had accessed the message relating to him at the weekend so it was still there. I noted that the website was a public website: it was not one which one had to log onto. Anyone with access to the internet could find his name. The applicant repeated that the website was only for Quranists and he said that it was not a very well-known movement or denomination. He said that even if his friends visited the website they would not know what a Quranist was. He said that his friends were Sunni Muslims but they were not interested in matters like this.
60. The applicant said [information regarding the message deleted: s.431(2)]. I noted that at the Departmental interview the applicant had also produced two character references. The applicant said that these were from Lebanese friends of his.
61. I put to the applicant that one of the things which I had to consider was whether he did genuinely fear that he would be persecuted if he returned to Egypt. I put to him that it was relevant in this context that he had come here [in] 2007 and that he had said that at that time he had already become a Quranist but that he had not been able to express his faith freely in Egypt. I put to him that he had not applied for a protection visa until December 2010. I put to the applicant that this delay was relevant to the genuineness or at least the depth of his fear of being persecuted if he returned to Egypt (see *Selvadurai v Minister for Immigration and Ethnic Affairs* (1994) 34 ALD 347).
62. The applicant said that he had come here on a student visa which he said meant that he did not have to go back to Egypt unless he decided to do so. He said that when his visa had been cancelled he had already got used to the life of freedom in Australia. He said that it had only been when his visa had been cancelled that he had realised that he was at real risk of being returned to Egypt and of being deprived of this freedom to practise and express his faith. He said that the other point was that he had not wanted to use his religion to obtain a visa. He said that if he had wanted to do this he would have done it from the beginning. He said that if his student visa had not been cancelled everything would have stayed secret and he would not have had to expose his faith and to apply for protection on this basis. He said that he believed that it was his right to be able to practise his religion without any fear.
63. I put to the applicant that the other thing I had to consider was the situation of Quranists in Egypt. I noted that I would obviously take into account [Mr A]'s evidence. I put to the applicant that the material available to me suggested that there had only been a few cases in which people identified as Quranists had been arrested and these people appeared to have been [of relatively high profile]. [Cited articles and URLs deleted: s.431(2).]
64. The applicant said that the problem with the situation in Egypt now was that there was no government protection. Those Quranists who had been arrested including [those known to

Mr A] had been arrested under an article relating to state security which was a very serious matter. He said that this could mean being lost in security prisons. He said that many people had died in security prisons without their families even knowing. He said that life in Egypt for Quranists was impossible. He said that before it had only been the previous government but now it was also the mainstream Sunnis and the Salafists who were in power and any activity which was considered to be a rejection of religion would be punished by immediate death. He said that there was no government which could protect them. He said that in his case it was possible that his father himself would kill him. He said that the Quranists were very few in number so they had no power and no protection whatsoever. He said that this was why he wished to stay in Australia. He said that it was not possible to express any opinion that went against the mainstream in Egypt. He said that as well he had plans to establish a Quranist foundation in Australia which would not be possible in Egypt.

65. The applicant asked if I believed that he could do what he was doing now in Egypt. I put to the applicant that on the basis of his description of what he was doing now in Australia it appeared that he could do exactly the same in Egypt. I put to him that he had said that he had not told the people with whom he lived or his friends that he was a Quranist and that he met in secret with other Quranists here just as he had in Egypt. The applicant said that they met in a coffee shop and they discussed their religious views in an ordinary conversation which he said would be impossible to do in Egypt. He said that any regular gathering in a certain place in Egypt would attract the secret service and the secret police and if they were exposed to be Quranists this could lead to a real threat to their lives.
66. The applicant said that he had the right to practise his faith openly like mainstream Sunnis or Christians in Egypt. He said that only the Quranists were considered as renegades. He asked why he should live in fear all the time. He said that there was a real threat to his life in Egypt. He referred again to the fact that the Muslim Brotherhood and the Salafists were now ruling the country and he said that they did not recognise the Quranists as Muslims. He said that this was why [Mr A] was living in [Country 2]. He said that if he went back to Egypt he would not be able to communicate with or to correspond with [Mr A] because these websites would be monitored by the government all the time. He asked if I thought he could call for his denomination publicly in Egypt.
67. The applicant's representative said that he noted the Tribunal's concerns about the mode of practice which the applicant had been pursuing here in Australia and in Egypt. He said that both modes of practice seemed very similar. He submitted that the applicant's restricted religious practices were an indication of his heightened level of fears, even in Australia, given that he was not yet a permanent resident. He submitted that the applicant had had to engage in self-imposed religious practices in Australia to avoid the situation where he might have to return to Egypt and his parents or other members of his family or the community would become aware that he was a Quranist.
68. The applicant's representative submitted that the authorities in Egypt remained largely indisposed to intervene in religiously-motivated violence in the current situation which indicated that Egypt was undergoing a form of religious regress where you had Islamists and other fundamentalist groups gaining more power in Egypt. He submitted that the applicant's restricted religious practice was a reaction to this situation. He referred to [Mr A]'s evidence that the applicant had been in regular contact with him and had been sharing religious questions and verdicts with him over a long period of time, certainly prior to the applicant deciding to apply for a protection visa, and that in his view the applicant was a genuine Quranist.

69. With regard to the applicant's delay in applying for protection, his representative submitted that the applicant had felt that he had a suitable visa, namely a student visa, which he had felt would enable him to obtain permanent residence. He said that the applicant had only applied for a protection visa after his student visa had been cancelled and there had been a strong possibility that he would be returned to Egypt.
70. The applicant's representative produced a copy of the United States Commission on International Religious Freedom *Annual Report 2011* in relation to Egypt (issued on 28 April 2011) which he noted referred to the Quranists as being a very tiny group. He said that the report talked about the Egyptian Government deviating from its responsibility to protect its citizens whatever their faith might be. He noted that it said that the authorities had prevented some Quranists from leaving the country, that many Quranists reported discrimination in employment and that they continued to suffer from harassment and surveillance by the security services. He also noted that the report said that since 11 February 2011 Egypt had witnessed an increase in crime and lawlessness due to a decrease in police and security presence and that some Islamist militants had used this lapse to impose extrajudicial punishments. The applicant's representative also produced a copy of a press release issued by Human Rights Watch on 11 February 2012 relating to a worsening of the climate for freedom of expression in Egypt since Hosni Mubarak had been ousted.
71. I asked the applicant if there was anything further he wished to say before I closed the hearing. The applicant said that, as [Mr A] had mentioned, all other religious groups apart from the Quranists were able to practise their beliefs freely in Egypt. He said that it was a very small group and very vulnerable without protection. He asked if he could live there in safety with a government that did not recognise his religious faith. He said that the Christians who were a fairly big religious group numbering around ten million were scared of the Salafists taking power in Egypt because this would be very risky for their safety and their religious faith. He said that there were probably no more than 20,000 or 30,000 Quranists.

Background

72. The Australian Department of Foreign Affairs and Trade (DFAT) advised in March 2010 that:
- 'R.1. To post's knowledge, there is a very small community of Koranists living in Egypt - approximately 50 - many of whom are related. Authorities have arrested, detained and beaten five to eight of the more high-profile Koranists. Given that the community is small and mostly related, it is difficult to distinguish between "ordinary" and "high-profile" Koranists. "Ordinary" Koranists have also been detained and questioned by the security authorities due to their links with the more "high-profile" members of their group. It is highly likely that authorities would keep a list of Koranists.
- R2. We are unaware of a fatwa being issued against Koranists by the Al-Azhar university. We understand that Al-Azhar scholars and leaders have criticised Koranists publicly and said that their views were blasphemous and could amount to apostasy. According to some interpretations of Islam, apostasy should be punished by death. We are not aware of any murders of Koranists.' (DFAT Country Information Report No. 10/30, dated 1 March 2010, CX244155)
73. In its *Annual Report 2010* in relation to Egypt the United States Commission on International Religious Freedom said that:

'Egyptian law prohibits blasphemy through Article 98(f) of its Penal Code, which prohibits citizens from "ridiculing or insulting heavenly religions or inciting sectarian strife." This provision has been applied to detain and prosecute members of religious groups whose practices deviate from mainstream Islamic beliefs or whose activities are alleged to jeopardize "communal harmony" or to insult the three "heavenly religions:" Judaism, Christianity, and Islam.

These include Muslim groups, such as the Koranists – a very small group in Egypt that accepts only the Koran as the sole source of religious guidance and thus has been accused by the Egyptian government of deviating from Islamic law. Many from the Koranist community report discrimination in employment and continue to suffer from harassment and surveillance by security services. Some members are prevented from leaving the country by authorities. In November 2009, authorities detained Koranist Abdel Latif Said for one week after his attempt to travel to Sudan. Earlier in April, security officials at Cairo International Airport prevented Said from traveling to the United States to attend a conference. In October 2008, Reda Abdel Rahman, an Egyptian blogger affiliated with the Koranist movement, was arrested and charged with "insulting Islam," reportedly because his blog called for political and religious reform in Egypt. After nearly three months in detention, during which he alleges he was physically abused, Rahman was released in January 2009.'

74. As referred to above, the Quranists who have been arrested appear to have been [known to Mr A]. [Details of certain arrests deleted: s.431(2)]

FINDINGS AND REASONS

75. Having regard to the evidence which [Mr A] gave at the hearing before me I accept that the applicant is a genuine Quranist. I am satisfied on the basis of [Mr A]'s evidence that the applicant has engaged in his conduct in contacting [Mr A] while he has been here in Australia otherwise than for the sole purpose of strengthening his claims to be a refugee and I consider that I am therefore not required to disregard this conduct in accordance with subsection 91R(3) of the Act.
76. In the statement accompanying his original application the applicant said that his faith would surely be exposed if he returned to Egypt, mainly by his mode of prayer and the time in the day at which he prayed. However at the hearing before me he said that the difference in prayers was not a difference in practices but in the prayers themselves so if he stood next to a Muslim and prayed he would do the same things which the Muslim did except that there was a bit of difference in the prayers he said. He said that the Muslim would not even notice. Although the applicant claims to have converted to Quranism in the middle of 2004 he said at the hearing before me that he had continued living at home until he left Egypt [in] 2007. He said that despite this fact his family in Egypt did not know that he was a Quranist. He said that in Australia he lived with Sunni Muslim friends in a shared house and these friends likewise did not know that he was a Quranist.
77. Both in Egypt and in Australia the applicant has met with other Quranists. He said that in Egypt they had gathered at a friend's house in a small group of no more than ten and in Australia he had met other Quranists on two or three occasions. He said that these meetings took place in a coffee shop and that they discussed their religious views in an ordinary conversation which he said would be impossible to do in Egypt. However, as I put to the applicant, on the basis of his description of his religious practices, it appears that he would be able to practise his religion in the same way in Egypt as he has in Australia.

78. I accept, however, that, as submitted by the applicant's representative, the applicant's ability to practise his religion more openly in Australia has been constrained by the fear that he might have to return to Egypt and that his father, other members of his family or the community more generally would become aware that he is a Quranist. I accept the applicant's evidence that, were it not for his fear of being persecuted, he would be more open about his religious beliefs. It is well-established that the Tribunal cannot impose any expectation on applicants that they will remain discreet and that if applicants were to do feel obliged to remain discreet for fear of being persecuted then the threat of serious harm would constitute persecutory conduct in itself: see *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs* (2003) 216 CLR 473.
79. As I put to the applicant in the course of the hearing before me, it appears that the Quranists who have been arrested in Egypt have been [relatively high profile]. However, as the Australian Department of Foreign Affairs and Trade advised in March 2010, the distinction between 'high profile' and 'ordinary' Quranists may be illusory, given the very small size of the community. I accept that even 'ordinary' Quranists have been detained and questioned by the authorities (DFAT Country Information Report No. 10/30, dated 1 March 2010, CX244155). I accept that, as the applicant himself said in the course of the hearing before me, if he were to return to Egypt and to continue to communicate with [Mr A] as he has been doing from Australia, this would come to the attention of the government because the security services keep the Quranists in Egypt under surveillance.
80. Having regard to the advice of the Australian Department of Foreign Affairs and Trade referred to above (DFAT Country Information Report No. 10/30, dated 1 March 2010, CX244155) I consider that there is a real chance that the applicant will be detained and questioned for reasons of his Quranist beliefs if he returns to Egypt now or in the reasonably foreseeable future. I consider that the persecution which the applicant fears involves 'serious harm' as required by paragraph 91R(1)(b) of the Act in that it involves a threat to his liberty or significant physical harassment or ill-treatment. I consider that his religion is the essential and significant reason for the persecution which he fears, as required by paragraph 91R(1)(a) of the Act. I further consider that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves his selective harassment for a Convention reason, namely his religion. Since the Egyptian Government is responsible for the persecution which the applicant fears I consider that there is no part of Egypt to which the applicant could reasonably be expected to relocate where he would be safe from the persecution which he fears.

CONCLUSIONS

81. I find that the applicant is outside his country of nationality, Egypt. For the reasons given above, I find that he has a well-founded fear of being persecuted for reasons of his religion if he returns to Egypt. I find that the applicant is unwilling, owing to his fear of persecution, to avail himself of the protection of the Egyptian Government. There is nothing in the evidence before me to suggest that the applicant has a legally enforceable right to enter and reside in any country apart from his country of nationality, Egypt. I therefore find that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act (see *Applicant C v Minister for Immigration and Multicultural Affairs* [2001] FCA 229; upheld on appeal, *Minister for Immigration and Multicultural Affairs v Applicant C* (2001) 116 FCR 154). It follows that I am satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention as amended by the Refugees

Protocol. Consequently the applicant satisfies the criterion set out in paragraph 36(2)(a) of the Migration Act for the grant of a protection visa.

DECISION

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