

1110014 [2011] RRTA 958 (16 November 2011)

DECISION RECORD

RRT CASE NUMBER:	1110014
DIAC REFERENCE(S):	CLF2011/109276
COUNTRY OF REFERENCE:	Egypt
TRIBUNAL MEMBER:	Giles Short
DATE:	16 November 2011
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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] September 2011 refusing an application by the applicant for a Protection (Class XA) visa. The applicant, who is in immigration detention, was notified of the decision under cover of a letter dated [in] September 2011 and the application for review was lodged with the Tribunal on [a further date in] September 2011. I am satisfied that the Tribunal has jurisdiction to review the decision.
2. The applicant is a citizen of Egypt. He last arrived in Australia [in] November 2009 as a student and he applied for a Protection (Class XA) visa [in] July 2011.

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 to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol; 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.’
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)
13. It is relevant in this case that the focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country: see *Randhawa v Minister for Immigration Local Government and Ethnic Affairs* (1994) 52 FCR 437 per Black CJ at 440-1. The issue is whether it is reasonable, in the sense of practicable, for the applicant to relocate to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution.
14. What is ‘reasonable’, in the sense of ‘practicable’, will depend upon the particular circumstances of the applicant and the impact upon the applicant of relocation within the country concerned. However it should be noted that the Refugees Convention is concerned with persecution in the defined sense, not with living conditions in a broader sense. Whether relocation is reasonable in the sense of practicable is therefore not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic rights: see *SZATV v Minister for Immigration and Citizenship* [2007] HCA 40 at [23]-[25] per Gummow, Hayne and Crennan JJ (with whom Callinan J agreed).

CLAIMS AND EVIDENCE

15. The Tribunal has before it the Department’s file CLF2011/109276 relating to the applicant. The applicant appeared before the Tribunal [in] October 2011 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 company deleted: s.431(2)] and Migration Services, a solicitor and registered migration agent. [Name deleted: s.431(2)] attended the hearing.

The applicant's original application

16. The applicant is aged in his early thirties. In his original application he said that he was a Muslim by religion. He said that he had completed 12 years of education in Egypt in [year deleted: s.431(2)]. He said that he had been unemployed or had engaged in limited shop work between [year deleted: s.431(2)] and 2005. He said that he had owned his own shop from December 2005 until January 2007 but that he had then been unemployed again until he had left Egypt to come to Australia as a student in September 2007. He said that he had returned to Egypt for a holiday from [a date in] August 2009 until [a date in] November 2009.
17. In a statement accompanying his original application the applicant said that he had not needed protection when he had first come to Australia. He said that when he had gone back to Egypt for a holiday in 2009 the situation had been worse. He said that he had not been able to finish his studies in Australia so he had not applied to renew his student visa.
18. The applicant said that he feared returning to Egypt because of the current political situation and because there was no government and no police. He said that since the protests that had occurred he was afraid to return home as there was no law and order and people were being killed. He said that his brother had been attacked in his home and that people were able to steal things because there was no law and order. He said that his brother had reported what had happened to the police but they had done nothing about it.
19. The applicant said that if he returned to Egypt he would have nowhere to live. He said that he used to live with his family in his grandfather's house but he said that his grandfather had died and all his family lived separately now. He said that his mother had died (in 1984 according to the details he provided in the Form 80) and that his father had left many years previously so he had been raised by his maternal grandparents. He said that he also feared being targeted by Christian groups because he was a Muslim.
20. The applicant said that he believed that if he returned to Egypt he would face a real chance of being arrested or killed. He said that there was no work and there was no stability. He said that he would face harm from 'anyone in the general population and the police' because of the current situation in Egypt. He said that the police were useless and they were not able to keep order because of the fighting between Christians and Muslims. He said that these incidents were occurring in the village which he came from and all over the country so he would not be safe anywhere. He said that the former president had let all the prisoners out of gaol so all the criminals were in the streets and he repeated that there was no law and order.

The applicant's evidence at the Departmental interview

21. The applicant was interviewed by the primary decision-maker in relation to his application [in] September 2011. He said that he had only one true brother: he said that the other siblings he had listed in his application were half-brothers and sisters. He said that since his mother had passed away he had lived with his maternal grandfather. He said that his older brother was a lawyer. He maintained that none of his half-brothers worked but he said subsequently that one of them had worked as a labourer. He said that his brother who was a lawyer had paid for his studies in Australia. He said that his brother had had some troubles and had not been able to help him any more so he had not been able to afford to continue studying.
22. The applicant referred to the fact that he had returned to Egypt for three months in 2009. He said that he had stayed with his maternal grandmother who was still alive. He said that he

had returned to Australia to complete his studies. He referred to the fact that he had become engaged to a woman from Lebanon in Australia. He said that he had had health problems since he had been detained.

23. The applicant said that in the past couple of years the situation had been getting worse in Egypt, especially after what had happened after the revolution. He said that there was no control - the police were not controlling things in the right way - so there had been fighting, killing and stealing. He said that two months previously - in June 2011 - some people had come to his father's house and had wrecked everything. He said that they had damaged the church next to them. He said that his brother had informed the police but nothing had been done.
24. The applicant produced a large number of items which he said he had obtained from the Internet, some of which were in Arabic (folios 134 to 181 of the Department's file CLF2011/109276). He said that these related to the law and order situation. He said that you could not live peacefully in Egypt. He said that because of his health he could not live in stress. He apparently produced a report in relation to his health which said that he had had [condition deleted: s.431(2)] as a child. He said that he had had an operation seven years previously and he had had another operation here.

Further material submitted to the Department

25. The applicant's original representative subsequently provided to the Department what she said was a copy of the police report (in Arabic without a translation) in relation to the ransacking of the applicant's father's house. She said that the applicant's father's house had been ransacked along with many other houses in the neighbourhood and that a lot of damage had been caused to the applicant's father's house and the other houses in the neighbourhood.

The applicant's evidence at the hearing before me

26. At the hearing before me the applicant produced a large number of documents relating to his medical history in Australia and a press report referring to the incident on 9 October 2011 in which a peaceful protest of about 10,000 Copts in Cairo degenerated into a violent confrontation with the armed forces in which a number of people were killed and many more injured. The applicant said that he produced this just to show some of the violence that was happening in Egypt.
27. The applicant confirmed that he had had an interpreter when he had prepared his original application to the Department of Immigration for a protection visa and that all the answers in that application were correct and complete. He said that he did not remember if the statement accompanying his application had been read back to him in Arabic. He said that he did not remember what was in the statement.
28. The applicant confirmed that he came from [town deleted: s.431(2)] in the Minufiyya governorate. I asked him what he feared would happen to him if he returned to Egypt now. The applicant said that it was like what was happening in the whole country: the police did not have any authority and nobody was in control of the people. He said that the armed forces were on the streets plus there was all the sectarian violence that had happened between the Muslims and the Christians. He said that the area where he lived had a majority of Christians and very few Muslims living in it. He said that problems had happened previously in June when unknown people had broken into homes and they had set the homes on fire,

both Muslim and Christian homes. He said that a couple of weeks previously after the huge problems that had happened between the Muslims and the Christians they had attacked his family and had broken into his family's home. He said that he did not know the reasons for this problem but this had led to his father being admitted to hospital. He said that his father had been on his own.

29. The applicant said that on top of this the doctors had been on strike for two weeks, the lawyers and judges had been on strike since 22 October and the police were on strike as of 24 October. He asked how there could be any control over the people. He said that also because of his health condition the whole country was not safe: there were lots of pressures and problems and killings and thefts. He referred to the fact that he had had an operation while he had been in the detention centre and he said that if he had been in Egypt he would not have been able to have this operation. He said that this could have led to his death because it had been [major] surgery.
30. The applicant said that it was difficult for him to obtain country information because his father was elderly and his family were not at their home most of the time because of the problems. He said that the cause of the problems was the government. He said that his family had tried to get a report of what had happened from the government but because the government was not dealing fairly with the people and because of the strike they had been unable to do so. He said that if in the coming few days he was able to contact his family and to obtain these reports he would forward them to the Tribunal. He said that he was not sure whether, if he had been in Egypt a couple of weeks previously, he would have been ill and unable to defend himself and therefore he would have ended up in hospital dead or he could have been in prison. The applicant said that the report to which he was referring related to the attack on his home which he had said had taken place a couple of weeks previously.
31. I noted that the Tribunal had access to a lot of information about what was going on in Egypt. I indicated that I did not necessarily agree with everything the applicant had said but that I agreed that the situation in Egypt was unstable and uncertain. I explained that I had to look at whether one or more of the five reasons set out in the Refugees Convention was the essential and significant reason for any persecution which he feared. I indicated that it was not enough for someone to be a refugee, for example, if there was an absence of law and order in a country. There could even be a civil war raging in a country but that did not make people who came from that country refugees. I explained to the applicant that I had to look at whether he feared that he would be singled out in some way for one of the five Convention reasons.
32. I noted that the only thing which the applicant had mentioned thus far was that his area was a Christian area and he feared that he would have problems because he was a Muslim. I put to the applicant that it was difficult for me to accept that there was a real chance that this would happen. I noted that it was true that, as he had said, and as the press report he had produced at the beginning of the hearing indicated, there had been fighting between Muslims and Christians in Egypt. I put to him, however, that I was not aware of any information that Christians were targeting Muslims in Egypt. I put to him, moreover, that, if I were to accept that he would have problems in his own local area for that reason, I would have to consider whether he could go somewhere else in Egypt. I put to him that it was relevant that something like 90 per cent of the population of Egypt were Muslims (US State Department, *International Religious Freedom Report 2010* in relation to Egypt, Section I, Religious Demography).

33. I put to the applicant that it was difficult for me to accept that he would be persecuted for one of the five Convention reasons if he returned to Egypt now. The applicant said that if his family had had the capacity to leave their home and to move to another area they would have done this a long time ago. He said that his father did not have an income - he was unemployed - and they did not have the capacity to do so. I noted that I was not concerned directly with his father: I was concerned with his situation. The applicant said that he was living in an area full of Christians and from their point of view they were defending themselves. He said that they were attacking the Muslims in that area. He said that he was not saying that they were attacking Muslims all over Egypt: this was happening in the area that he was living in, in the street he was living in. He said that this had even happened to the home he had been living in.
34. I put to the applicant that he had said that they had attacked Christian and Muslim houses indiscriminately. The applicant said that this had been in June. He said that what had happened a couple of weeks previously had been that the Christians in the street had gathered together and had attacked his family's home. He said that they had done this because there had been young children playing in the street and his father had been arguing with them. He said that all the Christians had gone out and they had started a problem with his father. He said that if he had the chance to get the police report from Egypt he would.
35. I asked the applicant what would prevent him from moving to a completely Muslim area where he would not have any problems from the Christians at all. The applicant said that he did not have the capacity to survive in Egypt, not only to move. He said that to move somewhere else he would need money and there was no money in Egypt. I noted that the applicant had been able to come to Australia to study as an overseas student so it was difficult to accept that there was no money in Egypt. The applicant said that before the problems his family's situation had been good and his family had been able to help him while he had been here. He said that when he had had his health issue some years previously his family had been able to pay the money but after the problems things had changed. He said that they were unable to support themselves so they would not be able to help him.
36. I put to the applicant that he would have to help himself. I noted that according to his application he had worked in the past in Egypt. The applicant denied that he had worked. He said that his family had tried to help him and they had established [a business] for him but the situation had deteriorated in Egypt. I put to the applicant that, according to his application, before he had had his own shop he had worked in other people's shops. The applicant suggested that his representative who had assisted him in preparing his original application might have misunderstood.
37. I noted that the applicant was [age deleted: s.431(2)] years old so he was certainly old enough to earn a living. I put to him that it was a little difficult for me to accept that there was nothing he could do in Egypt. The applicant said that there was no work or nothing to be done in Egypt and because of his health condition even if he were to seek work as a labourer there were no opportunities in that field because he had a health condition. I put to him that as I understood it his health condition prevented him from lifting heavy objects (see folio 172 of the Tribunal's file 1110014) but it would not prevent him from working in a shop. The applicant said that there were no work opportunities in shops. He said that his fiancée had left him because of his [medical] condition. He said that this had happened about 20 days or a month after he had had the operation.

38. I noted that I had to look once again at how his [medical] condition related to one of the five Convention reasons. I put to him that it was not enough, for example, that health care in Egypt might not be as good as health care here. I had to look, for example, at whether he might be denied health care for one of the five Convention reasons. The applicant said that if he had been in Egypt he would not have been able to pay for the operation: he would have been dead. He said that when he had had [surgery] seven years previously in Egypt his father had had to sell a shop and he had also got help from other parties. He said that even thinking that he could be there was affecting his health problems and affecting him psychologically. He said that this was mentioned in the medical reports he had produced.
39. I put to the applicant that, as I had said, what I had to look at was how this related to the definition of a refugee. I put to him that the fact that he had a [medical] condition might raise compassionate considerations but it did not in itself bring him within the definition of a refugee. I put to him that the fact that he would not be able to afford the sort of medical treatment which he had been getting here if he were to return to Egypt likewise did not bring him within the definition of a refugee. I put to him again that I had to look at whether he would be denied medical treatment or whether he would be discriminated against in some way for one of the five Convention reasons.
40. The applicant responded that he could not say whether things were going to happen against him or if he would be discriminated against specifically. He referred to the fact that he had been in Australia for the last four years and he had not been in Egypt when all the problems had been happening. He said that they were discriminating against everybody there. I put to the applicant that if these problems - the sort of problems to which he had referred about the current situation in Egypt - were affecting everybody there then they did not bring him within the definition of a refugee. I put to him that, as I had said, one of the five Convention reasons had to be the significant and essential reason for the persecution which he feared. The applicant said that the main reason was the area that he lived in plus his health condition. He said that he did not have any other reasons.
41. The applicant's representative submitted that the fact that there were multiple reasons for the problems in Egypt did not necessarily preclude the Convention reason being the significant and essential reason. He said that he believed that there was case law to that effect. He said that the applicant had mentioned his fear of religious persecution in his home area. I noted that in that case there was a Convention reason. The applicant's representative said that they would submit that this was the essential and significant reason. He said that obviously the health care was weighing on the applicant's mind because he was a young man who had a serious [medical] condition. He said that he had just wanted to make the point that there were two reasons floating around but he reiterated that they would submit that the essential and significant reason was religious persecution.
42. The applicant's representative said that they did not disagree with the proposition that the applicant's health problem in itself did not bring him within the definition of a refugee but he submitted that it was relevant to internal relocation in so far as that issue was really about looking at the individual circumstances of the applicant. He argued that there was really a two step test which he submitted involved asking whether relocation was relevant and whether it was reasonable in the circumstances of the applicant. He submitted that the applicant's health condition might be an important factor in suggesting that relocation was not a reasonable option for him. He gave as an example of the way in which this might manifest itself in a practical sense that the area to which it was suggested that the applicant might relocate might not possess the health services which the applicant required to keep him

alive. He submitted that there was no difference between looking at a factor like this and looking at someone's work abilities or work history. He suggested that if someone with no skills was going to an area with high unemployment the view might be taken that it was not reasonable for him to relocate there.

43. I indicated to the applicant's representative that I thought that this submission was not quite in accordance with the law. The courts had said that relocation was not about whether the person would be comfortably off economically (see *SZATV*, referred to above): it was about the practical realities. I noted that, realistically, if the applicant were to relocate, it would be to one of the big cities where the medical services were much better than in a place like [town deleted: s.431(2)]. The big hospitals were in big cities like Cairo and Alexandria.
44. The applicant's representative said that they did not submit that this was the only factor in assessing the reasonableness of internal relocation, simply that it was a factor which might be significant. He said that if the applicant could only do certain types of work, if he could only work in a shop, and medical treatment was expensive and the applicant did not have the support of his family unit in the area of relocation, then the combination of all those factors, having particular regard to the applicant's serious medical condition, might impact upon internal relocation. I gave the applicant's representative until [a date in] November to make written submissions on these issues.

Post-hearing submissions

45. In a submission dated [in] November 2011 the applicant's representatives referred to the applicant's evidence that he was Muslim, that his family lived in an area that was predominantly Christian and that his family had been subjected to attacks by Christians. They submitted that religion was the significant and essential reason for the persecution which the applicant feared. They submitted that Egypt was presently in a transitional state and the security situation there was dynamic. They submitted that there was a breakdown of civil order, frequent reports of violence and a crackdown on freedom of expression. They submitted that 'it cannot be said that there is any effective state protection in Egypt at present and that there must be serious doubts that such protection will emerge in the reasonably foreseeable future'.
46. The applicant's representatives submitted that the fact that there was serious civil disturbance in Egypt which might result in indiscriminate violence or a danger to the whole community did not necessarily preclude Convention-related harm occurring. They submitted that the violence perpetrated against the applicant's father had the necessary selective or discriminatory quality to attract the protection afforded by the Refugees Convention. They submitted that members of the Christian majority in the locality where the applicant's family lived had attacked the applicant's father because of his religious beliefs.
47. The applicant's representatives submitted with regard to relocation that 'there is no area within Egypt that is practically safely and legally accessible', apparently on the basis that the applicant would still be at risk from the generalised unrest and violence that was occurring throughout Egypt. They submitted that the applicant would not be able to earn a living in other parts of Egypt and that he would not have access to the health care he needed. They submitted that the applicant would need assistance from his father in order to look after his health needs. They referred in this context to the applicant's evidence that his family had helped him to establish his [business] but that his father's financial position was not what it

had been and they submitted that the applicant would therefore not be able to set up a business as he had before.

48. The applicant's representatives referred in this context to paragraph 29 of the UNHCR Guidelines on "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees' (23 July 2003), emphasising the statement that '[i]f, for instance, an individual would be without family links and unable to benefit from an informal social safety net, relocation may not be reasonable, unless the person would otherwise be able to sustain a relatively normal life at more than just a minimum subsistence level'.
49. The applicant's representatives said that the applicant had provided them with some additional information regarding his case and the situation in Egypt and they said that they were obtaining translations of what they understood were police and medical reports regarding the attack on the applicant's father which they would provide by [a date in] November 2011. They also provided a lengthy list of links to video footage on YouTube which they said the applicant had indicated supported his claims of religious persecution by Christians towards Muslims in Egypt. The links in fact relate to Christians protesting violence by Muslims against the Christian community, in particular the protests in Cairo in May and October.
50. On [this date in] November 2011 the applicant's representatives produced a copy of a police report made by the applicant's father [in] October 2011, together with a translation. According to the report the applicant's father told the police that 'my young kids had a brawl with the neighbours' (although he also said that he had been alone in the house at the time) and that when he had blamed the neighbours they had started beating him. He said that he had been hit on his arm, leg and chest and that his house had been damaged as well.
51. The applicant's father said that he had not brought witnesses because the whole street was inhabited by Christians and nobody would come and give a statement in his favour. He referred to 'ongoing unrest in the country where some churches were burnt, and some mosques were burnt as well' He said that there were only two Muslim houses in his street. According to the report First Lieutenant [name deleted: s.431(2)] went to the applicant's house to investigate and confirmed that the neighbours had attacked the applicant's father and damaged his house. The report says that the investigation proved that there were conflicts between the Christians and the Muslims living in the street caused by the sectarian unrest in the country and the destruction of mosques and churches.
52. Also attached is a medical report from an orthopaedist likewise dated [in] October 2011 and stating that the applicant's father had suffered a fractured right arm and leg, a cutting injury in the chest and various wounds, bruises and abrasions, and that the cause of these injuries was a '[c]laimed brawl'. The police report, however, says that the applicant's father only suffered a 'bruise and scratch in the right leg' while otherwise reflecting the injuries set out in the report from the orthopaedist. The applicant's representatives submitted that these documents supported the applicant's contention that violence had been perpetrated against his father by Christians living in the area from which his family came.

FINDINGS AND REASONS

53. I accept that the applicant is a Muslim by religion. In his original application he said that he feared returning to Egypt because of the law and order situation there. As I put to the

applicant, an absence of law and order in itself will not bring an applicant within the definition of a refugee: one or more of the five Convention reasons must be the essential and significant reason for the persecution which an applicant fears (see paragraph 91R(1)(a) of the Act).

54. The applicant said in the statement accompanying his original application that his brother had been attacked in his home and that people were able to come and steal things because there was no law and order. He said that his brother had reported what had happened to the police but they had done nothing about it. When he was interviewed by the primary decision-maker the applicant said that in June 2011 some people had come to his father's house and had wrecked everything. He said that they had damaged the church next to them. He said that his brother had informed the police but nothing had been done.
55. The applicant's original representative subsequently provided to the Department what she said was a copy of the police report (in Arabic without a translation) in relation to the ransacking of the applicant's father's house. She said that the applicant's father's house had been ransacked along with many other houses in the neighbourhood and that a lot of damage had been caused to the applicant's father's house and the other houses in the neighbourhood. At the hearing before me the applicant said that in June unknown people had broken into homes and they had set the homes on fire, both Muslim and Christian homes.
56. The applicant also said that a couple of weeks before the hearing, after the huge problems that had happened between the Muslims and the Christians, they had attacked his family and had broken into his family's home. He initially said that he did not know the reasons for this problem but he said subsequently that the Christians had attacked his family's home because there had been young children playing in the street and his father had been arguing with them.
57. As referred to above, after the hearing the applicant's representatives produced to the Tribunal a copy of a police report made by the applicant's father [in] October 2011, together with a translation. According to the report the applicant's father told the police that 'my young kids had a brawl with the neighbours' (although he also said that he had been alone in the house at the time) and that when he had blamed the neighbours they had started beating him. He said that he had been hit on his arm, leg and chest and that his house had been damaged as well. The applicant's father said that the whole street was inhabited by Christians and that there were only two Muslim houses in his street.
58. According to the report First Lieutenant [name deleted: s.431(2)] went to the applicant's house to investigate and confirmed that the neighbours had attacked the applicant's father and damaged his house. The report says that the investigation proved that there were conflicts between the Christians and the Muslims living in the street caused by the sectarian unrest in the country and the destruction of mosques and churches. The medical report confirms that the applicant's father suffered injuries caused by a '[c]laimed brawl'. The applicant's representatives submitted that these documents supported the applicant's contention that violence had been perpetrated against his father by Christians living in the area from which his family came.
59. While I accept that the police and medical reports confirm that the applicant's father was attacked by Christians living in the area in October 2011, I do not accept on the basis of these reports and the applicant's own evidence that the significant and essential reason for this attack on the applicant's father was his religion as a Muslim. I find on the basis of the

applicant's own evidence and these reports that this was a neighbourhood dispute relating to children playing in the street and that the applicant's father's Christian neighbours reacted after the applicant's father argued with them or blamed them. I find with regard to the earlier incident in June that Muslim and Christian houses in the area were attacked indiscriminately. I do not accept, therefore, that on this occasion either the significant and essential reason for the attack on the applicant's father's house was the applicant's father's religion as a Muslim.

60. While I accept the applicant's evidence, supported by these reports, that his father's house is one of only two Muslim houses in the street, I do not accept on the basis of these incidents that there is a real chance that the applicant will be attacked or otherwise persecuted for reasons of his religion as a Muslim if he returns to his home in Egypt now or in the reasonably foreseeable future. I accept that there is conflict between the Christians and the Muslims living in the street caused by the sectarian unrest in Egypt and the destruction of mosques and churches, just as there is elsewhere in the country, but I do not accept that, as claimed by the applicant, Christians are targeting Muslims for reasons of their religion in his home area or elsewhere in Egypt.
61. As referred to above, at the Departmental interview the applicant produced a large number of items from the Internet (folios 134 to 181 of the Department's file CLF2011/109276) which he said related to the law and order situation. At the hearing before me he produced a press report referring to the incident on 9 October 2011 in which a peaceful protest of about 10,000 Coptic Christians in Cairo degenerated into a violent confrontation with the armed forces in which a number of people were killed and many more injured. He said that he produced this just to show some of the violence that was happening in Egypt.
62. As likewise referred to above, in their submission dated [in] November 2011 the applicant's representatives provided a lengthy list of links to video footage on YouTube which they said the applicant had indicated supported his claims of religious persecution by Christians towards Muslims in Egypt. However the links in fact relate to Christians protesting violence by Muslims against the Christian community, in particular the protests in Cairo in May and October. As I put to the applicant, while I accept that there has been fighting between Muslims and Christians in Egypt, I do not accept on the evidence before me that Christians are targeting Muslims in Egypt. I do not accept that there is a real chance that the applicant will be attacked or otherwise persecuted for reasons of his religion as a Muslim if he returns to his home in Egypt now or in the reasonably foreseeable future.
63. I accept that, as referred to in the medical documents which the applicant produced at the hearing before me, while in immigration detention the applicant underwent an operation described in the documents as '[details deleted: s.431(2)]' (folio 171 of the Tribunal's file 1110014). Immediately after the operation he required a carer but a note from his [specialist] [in] September 2011 said that he no longer required a 24 hour carer (folio 68). In a letter dated [in] October 2011 the [details as outlined by the specialist deleted: s.431(2)] but that the applicant complained of feeling unwell and was suffering from anxiety and depression associated with his application for refugee status (folio 180).
64. As I put to the applicant, I do not accept that his health condition in itself brings him within the definition of a refugee. As I put to him, I have to look at whether there is a real chance that he will be denied medical treatment or that he will be discriminated against in some way for one of the five Convention reasons in relation to the provision of medical treatment. At the hearing before me the applicant said that if he had been in Egypt he would not have been able to pay for this operation and he would have been dead. However, as I put to him, the

fact that he will not be able to afford the sort of medical treatment which he has been getting here if he returns to Egypt likewise does not bring him within the definition of a refugee.

65. The applicant said that even thinking that he could be there was affecting his health problems and affecting him psychologically. I accept on the basis of the letter from the applicant's [specialist] that the applicant's anxiety with regard to the outcome of this review is affecting his overall health. However I do not accept on the evidence before me that there is a real chance that the applicant will be denied medical treatment, or that he will be discriminated against in relation to the provision of medical treatment, for one or more of the five Convention reasons, if he returns to Egypt now. Having regard to my findings above I have not considered it necessary to consider whether it would be reasonable, in the sense of practicable, for the applicant to relocate to some other part of Egypt as discussed at the hearing before me.

CONCLUSIONS

66. For the reasons given above I do not accept that the applicant has a well-founded fear of being persecuted for one or more of the five Convention reasons if he returns to Egypt now or in the reasonably foreseeable future. I am not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in paragraph 36(2)(a) of the Act for a protection visa.

DECISION

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