

1202438, 1202473 [2012] RRTA 418 (14 June 2012)

DECISION RECORD

RRT CASE NUMBERS: 1202438, 1202473

DIAC REFERENCES: CLF2011/27454, CLF2011/125250

COUNTRY OF REFERENCE: Egypt

TRIBUNAL MEMBER: Andrew Jacovides

DATE: 14 June 2012

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of Egypt, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] February 2011.
3. The delegate refused to grant the visas [in] January 2012, and the applicants applied to the Tribunal for review of that decision.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

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

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's files relating to the applicants. The Tribunal has had regard to the material referred to in the delegate's decisions and other material available to it from a range of sources.
20. The applicants appeared before the Tribunal [in] June 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
21. The applicants were represented in relation to the review by a registered migration agent.
22. The applicants are father and son. The Tribunal will refer to the first named applicant as *Applicant 1* and the second named applicant as *Applicant 2*.

Department files CLF2011/27454 and CLF2011/125250

Claims by Applicant 1

23. The applicant stated in his protection visa application that he was a citizen of Egypt. He provided a partial copy of his Egyptian passport. He indicated that he was [born] on [date deleted: s.431(2)]; he was fluent in Arabic; he was a Christian; he was married in [City 1][in

1986]; he lived at the same address in [City 1] from 1986 until 2011; he had 19 years of education, including a [Diploma]; he owned his own [company]; and his wife and two other sons were living in Egypt.

24. The applicant stated that he and his family faced persecution every day of their lives in Egypt because they were Christians. He stated that after [January] 2011 there was no government or police to provide protection to persons such as him who were targeted by Muslim extremists. He referred to documents attached to the application and asked for an interview to explain his circumstances.
25. The applicant submitted twelve hand written pages, in Arabic with unofficial translations, with the following information:
- A document headed *Record* and issued by the [Police] Station [in] February 2008, relating to an interview between the police and the applicants. It relates to a complaint by the applicants that they were harassed, imprisoned, and mistreated for three days, by [name deleted: s.431(2)], after being arrested at their church. They reportedly stated that military officers told them to “stop the [church] service ... and [the] orphanage service” The applicants reportedly stated that they were physically harmed by two guards and they wanted to lodge an official complaint against the officers involved.
 - Another document titled *Preview Report to the Incident*, [dated] July 2009, relating to a break-in at the applicants’ home when “all the religious [stuff] was crushed and broken and bible was ripped all over the place” but none of their other belongings were vandalised.
 - A police document from the [Police] Station, dated [February] 2010, relating to a report by Applicant 2 that his business had been set alight and destroyed. He reportedly accused the “people [who] broke [into his] apartment and [sent him] a letter of threat”.
 - A Ministry of Interior report, dated [July] 2009, relating to the break-in at the applicants’ home. Applicant 2 reportedly stated that all religious material was destroyed by the perpetrators and a threatening letter was left on the premises.
 - An earlier report to the same [police station], by [Applicant 1’s wife], [in] December 2007, indicating that she had been hit by an unknown woman and her leg was broken. She reportedly stated that the incident occurred as she was leaving her church and the perpetrator “grab[bed] the cross from [her] chest and threw it [on] the ground”.
 - A report to the [Police Station], [in] September 2009, by Applicant 1, stating that five people came to his home and attempted to assault him, his wife, and their two sons. He reportedly stated that their home was next to their church, and they were involved in a “lot of activities in the church”, which led to the attack. He stated that they did not gain entry into the house but they frightened the applicant and his family; insulted their religion; and told them not to go to church.

26. The applicants submitted a letter from a “community volunteer” who stated that Applicant 1 was referred to him by a Coptic parish priest to assist with the lodgement of a protection visa because he was “agitated as a result of the persecution suffered in Egypt at the hands of the Muslims” He stated that the applicant and his family were subjected to serious harm because they were devoted Christians.
27. The applicant provided a separate statement, undated, describing his circumstances in Egypt and the reasons he was seeking a protection visa. He indicated that he arrived in Australia [in] January 2011 and applied for a protection visa approximately one month later. He stated that Muslims in Egypt were seeking to kill him for his religion and his involvement in the church. He stated that his family had a long association with the Coptic Christian Church with many members of the family becoming “priests and monks” for the church. He stated that he was a member of the [Church Council] and he was involved in community activities with the Christian community. He stated that he worked with those “experiencing social problems, illness in the family, or when the household has recently received matrimonial, baptismal, or burial services, serve Christians who convert from Islam and serve Christians who under pressure by Muslim Brotherhoods to enforce them to convert to Islam” He stated that he cared for Christians in prison and their families. The applicant claimed that most Christians in prison were being persecuted for their religion. He provided details regarding his business activities and his involvement in support services with his church.
28. The applicant stated that a person he was assisting in prison converted from Islam to Christianity. He stated that they hid his wife and children who were being persecuted because the man had converted. He stated that they provided financial and social support for the family. The applicant claimed that the man’s brother accused the applicant of having kidnapped the man’s family and of encouraging them to convert to Christianity. The applicant claimed that he was detained for four days in October 2010 and accused of a crime “according to the emergency law” He stated that three days after his release his business was destroyed and he received death threats. He stated that he was accused of doing business with Israel.
29. The applicant claimed that he assisted a young woman who had converted from Islam to Christianity. He stated that her family accused him of kidnapping her. He claimed that the authorities “informed the Muslims” to kill him rather than provide him with protection. He stated that there was no state protection for Christians in Egypt.
30. The applicant claimed that he was advised by his lawyer in Egypt to leave the country before he was prevented from leaving. He stated that he came to Australia to seek protection.

Claims by Applicant 2

31. The applicant stated in his protection visa application that he was a citizen of Egypt. He provided a partial copy of his Egyptian passport. He indicated that he was [born] on [date deleted: s.431(2)]; he was fluent in Arabic and English; he was a Coptic Christian; he arrived in Australia [in] April 2008; he lived at the same [City 1] address from 1987 until 2008; he had fourteen years of education; and he was a student.
32. The applicant stated that he left Egypt to avoid persecution by religious activists. He claimed he was detained by security officers because he represented “Christian students at the university” and he was accused of defaming Islam. He stated that he will be killed by Islamic fanatics and the police in Egypt for his religious activities.

33. The applicant provided a separate statement of his claims [dated] June 2011. He stated his brother [Mr A] was killed by Muslim fanatics in Egypt. He claimed that his brother was shot [in] 2011 and he was informed three days later that his brother had died in hospital. He stated that his father (Applicant 1) suffered a heart attack on hearing the news.
34. The applicant claimed that he was an active member of his church in Australia, serving as a deacon, and in the church's community outreach programmes. He stated that in Egypt he was detained several times by the authorities because of his religious activities. The applicant claimed on one occasion he was caught in sectarian violence and detained by the police. He stated that he was detained in 2006, while trying to defend his church from attack; the second time while he was at university; and the third time for assisting a Muslim girl who converted to Christianity.

Interview with the delegate

35. The applicants attended interviews with the delegate. Applicant 1 was interviewed [in] April 2011 and Applicant 2 was interviewed [in] June 2011. The Tribunal has listened to the interviews. The audio quality of the interview with Applicant 1 is poor and some of the interpreting is unclear.
36. Applicant 1 stated that he had difficulties with Muslims in Egypt and the authorities because of his religious activities. He stated he was involved in "evangelising" which led to adverse interest from Muslims in the community and the authorities. He claimed that he faced particular targeting after he assisted a Muslim man in prison to convert to Christianity. He stated that he was forced into hiding for three months before he left Egypt because he and his family were targeted and harassed by elements in society who objected to his involvement in what they perceived to be proselytising to Muslims. He stated that his wife and sons remained in hiding after he left the country. The applicant stated that the documents he submitted with the application were sent to him by his wife and translated by his son in Australia. The delegate commented that there were incidents referred to in those documents which had not been included in his written statements.
37. The adviser stated that "many things" had happened to the applicants in Egypt and he had to seek further "clarification" from them regarding their statements and circumstances.
38. Applicant 2 provided evidence regarding his religious activities in Egypt and the targeting he suffered from the authorities. He confirmed his father's evidence that the family was targeted for religious reasons by a group of Muslims who objected to their religious activities. The applicant stated that he was accused of insulting Islam at university and he was expelled in 2007. He stated that he was demanding respect for his religion. The applicant stated that "technically" he was enrolled at the university but he was barred from attending classes. He stated that his outspoken support of his religion was only one of the reasons he had difficulties with the authorities at the university. He stated that he also had a friendship with a Muslim woman, who later converted to Christianity, which further attracted the adverse interest of the authorities. He stated that he and the woman met in February 2006 and after five months she began to assist him with his outreach work with the poor and disabled. He stated that in 2007 she became his "girlfriend" and she was baptised at a Christian church in [City 1] just before he left Egypt. The applicant indicated that she left Egypt for [another country] in 2010. He indicated that he applied for [a visa to this country] to be reunited with her but his request was denied. The applicant claimed that he was detained three times in Egypt between 2006 and 2008, because of his religious activities, and each time he was held

for two or three days. The applicant stated that his relationship with the Muslim woman contributed to the adverse interest he suffered from the authorities. He stated that Muslim extremists attacked him on the street in 2008 because it became known in the community that he was having a relationship with a Muslim woman. The applicant stated that he was seriously injured in the attack. The delegate asked the applicant why he did not apply for a protection visa as soon as he arrived in Australia. He stated that an “agent” told him that if he applied for a protection visa he would have placed his family in Egypt at risk of harm. He stated that he was dissuaded by that person from pursuing that course of action. He was asked why he applied in 2011. The applicant stated that after his father arrived in Australia, and he learnt the full extent of their difficulties in Egypt, they spoke to their priest and he referred them to a migration agent. He stated that he was afraid of being subjected to serious harm by Muslim extremists and the authorities for “converting Muslims” to Christianity.

Other submissions to the Department

39. The applicant’s adviser submitted information from external sources relating to the circumstances of Coptic Christians in Egypt, including a thesis by Baheg Bistawros 1996, *The Coptic Christians of Egypt today: Under threat of annihilation*, Regent University, Virginia; United State Commission on International Religious Freedom 2011, *Annual Report*, May; and other reports from media sources relating to sectarian violence and civil unrest in Egypt between 2008 and 2011.
40. The adviser submitted a letter from [a Father], of the Coptic Orthodox Patriarchate, dated [June] 2011, which indicated that the applicants had discussed with him the difficulties they had with “Muslim fanatics” in Egypt because of their religious activities with the Coptic Church in [City 1]. He stated that they faced life-threatening harm from those fanatics in the future. The witness stated that [Mr A] (Applicant 1’s son and Applicant 2’s brother) was shot in Egypt and Applicant 1 subsequently suffered a heart attack. The witness offered an opinion that the applicants provided a truthful account of their circumstances.
41. The Department received a submission from the applicant’s adviser [in] July 2011. He indicated that he would be submitting documents relating to the killing of [Mr A] in Egypt, including a death certificate, newspaper articles relating to the incident, a medical report, a police report, and letters from the Coptic Church to confirm the incident. There is no indication on file that the documents were submitted.
42. The Department was notified [in] December 2011 that the applicants had a new migration agent because their former agent had been barred from practicing.
43. The Tribunal was notified by the Migration Agents Registration Authority that the applicants’ former migration agent’s registration ceased [in] August 2011.

The delegate’s decisions

44. The delegate found that the applicants’ main claims lacked credibility. He did not accept that they suffered persecution in Egypt for the reasons provided. He found that their fear of harm for being Coptic Christians was not well-founded.

Tribunal files 1202438 and 1202473

45. The applicants did not provide any claims or submissions in support of the review application.

The hearing

46. The applicants attended the hearing with their adviser. They provided evidence for themselves and each other. They consented to having a joint decision.
47. The applicant's adviser stated that the applicants' former adviser had made significant errors in presenting the applicants' claims. He stated that the documents he undertook to submit [in] July 2011, which related to the killing of [Mr A], did not exist. He stated that he had obtained a copy of the death certificate, which listed the cause of death as an "accident". He stated that there was no external evidence to support the view that he was killed in sectarian violence. He submitted the documents from Egypt, which were previously submitted by the applicants' former adviser, and he indicated that he had obtained official translations for those documents. He also submitted a document relating to Applicant 1's medical difficulties [in] June 2011, when he was taken to hospital complaining of chest pain.
48. The applicants provided evidence individually. They repeated the oral evidence they provided to the delegate. They indicated that they had each been detained by the authorities on three occasions, once together, and twice separately, for various reasons relating to their religious activities. They indicated that the conversion from Islam to Christianity of a man in prison, and Applicant 2's former girlfriend, was the main reason they were targeted before and the reason they feared serious harm in the future. They indicated that they had extended family in [City 1] facing the difficulties which all Christians have been facing since the revolution; but they had not been targeted specifically to the extent that the applicants' family had been targeted, because they were not implicated in proselytising activities. The applicants indicated that they were held in custody for 2 to 3 days each time they were arrested and the authorities harassed them regarding their religious activities. Applicant 1 stated that the references to the "orphanage" in the documents submitted related to a home for children run by his church. He stated that the orphanage had a capacity of 45 children. He stated that they were accused by Muslim extremists of using the orphanage to convert children from Islam to Christianity. Applicant 1 stated that they had very few Muslim children staying at the orphanage, and they were not encouraged to convert and did not convert to Christianity.
49. The applicants provided a consistent account of the sequence of events which led to their decision to leave Egypt, in 2008 for Applicant 2 and in 2011 for Applicant 1. They indicated that in October 2010, Applicant 1 was detained for 3 days for his alleged involvement in the conversion of the prisoner, and two days later his business was destroyed in a fire. He stated that the family went into hiding, by moving to a place about 90 minutes away from their home, and renting a furnished apartment. He stated that they have not returned to their home in [City 1] since then. The Tribunal commented that some of the details he was providing differed (slightly) from the details in his written statement. He indicated that the statements prepared by his former adviser had not been properly checked for accuracy. The Tribunal noted that his evidence, and his son's evidence, at the hearing was consistent with what they told the delegate at the interview.
50. Applicant 2 provided photographs of himself taken during activities with his church youth group in Egypt, including their charity and community work; and photographs taken

with his partner in Egypt. He stated that they maintained contact with each other, and he was hoping they would be reunited, until his brother was killed and she indicated to him that she was too afraid to maintain the relationship. He stated that she was effectively in hiding [in another country], from her family and the Muslim community more broadly, because she converted from Islam to Christianity.

51. The applicants stated that they feared harm by the authorities and Muslim extremists in Egypt, because of their alleged involvement in converting Muslims to Christianity; and more broadly for their active involvement with the Coptic Church in Egypt.

Information from external sources

52. The Tribunal considered information from external sources relating to conditions in Egypt since the popular uprising in 2010/11:

- ‘Egypt News – Revolution and Aftermath’ 2011, *The New York Times*, 30 June
<http://topics.nytimes.com/top/news/international/countriesandterritories/egypt/index.html> – Accessed 6 July 2011;
- ‘Egypt pledges crackdown on unrest’ 2011, *The Age*, source: *Agence France-Presse*, 12 September <http://www.theage.com.au/world/egypt-pledges-crackdown-on-unrest-20110911-1k43l.html> – Accessed 12 September 2011;
- ‘Egypt security expert discusses external threats to post-revolution Egypt’ 2011, *MSN Arabia News*, 18 August
<http://arabia.msn.com/News/MiddleEast/youm7/2011/August/8466125.aspx?region=all.&featuredAll> – Accessed 12 September 2011;
- ‘Egypt’s Economy Rebounding from Revolution’ 2011, *International Business Times*, 23 August
<http://www.ibtimes.com/articles/202511/20110823/egypt-revolution.htm> – Accessed 13 September 2011. (\\ntssyd\refer\Research\2011\Web\EGY-Egypt's Economy Rebounding from Revolution.doc);
- ‘Egypt’s euphoria gives way to hard economic realities’ 2011, Market Watch website, 30 August <http://blogs.marketwatch.com/thetell/2011/08/30/egypts-euphoria-gives-way-to-hard-economic-realities/> – Accessed 13 September 2011;
- ‘Fears rise as Egypt cracks down on press and liberties’ 2011, *Financial Times*, 12 September <http://www.ft.com/intl/cms/s/0/06fa53cc-dd56-11e0-9dac-00144feabdc0.html#axzz1XnTvRe9B> – Accessed 13 September 2011; \\ntssyd\refer\Research\2011\Web\EGY- Fears rise as Egypt cracks down on press and liberties.doc
- Central Intelligence Agency 2011, ‘The World Factbook – Egypt’, Central Intelligence Agency website, 23 August
<https://www.cia.gov/library/publications/the-world-factbook/geos/eg.html> – Accessed 12 September 2011;
- Department of Foreign Affairs and Trade 2011, ‘Travel Advice – Egypt’, Smart Traveller website, 25 August <http://www.smartraveller.gov.au/zw-cgi/view/advice/egypt> – Accessed 13 September 2011;

- Elgindy, K. 2011, 'Egypt's Transition Six Months On: From Diversity to Divisiveness', Brookings Institution, 4 August
http://www.brookings.edu/opinions/2011/0804_egypt_elgindy.aspx – Accessed 12 September 2011;
- Hubbard, B. & El Deeb, S. 2011, 'Ultraconservative Muslims dominate Egypt protest', *Associated Press*, 29 July
http://hosted2.ap.org/APDEFAULT/*/Article_2011-07-29-ML-Egypt/id-75c9a8671dff4370a3ee4040a56d580f – Accessed 3 August 2011;
- Human Rights First 2011, 'Sectarian Violence in Egypt', 14 June
http://www.humanrightsfirst.org/wp-content/uploads/pdf/Fact_Sheet-Egypt-Sectarian-Violence.pdf – Accessed 21 July 2011;
- International Federation for Human Rights (FIDH) 2011, *Escalation of inter-confessional violence in Egypt*, 9 May. (CISNET Egypt CX266117) ;
- Jamestown Foundation 2011, 'Salafists, Copts and Sectarianism in Egypt after the Revolution', *Terrorism Monitor*, Volume IX, Issue 22, 2 June; and
- Sharp, J. 2011, *Egypt in Transition*, Congressional Research Service, 23 August at <http://www.fas.org/sgp/crs/mideast/RL33003.pdf> – Accessed 12 September 2011.

53. The above information indicates to the Tribunal that civil unrest and political instability is continuing in Egypt; and the military has been implicated in human rights violations against the public; and in particular, persons who participate in demonstrations and rallies. The Tribunal noted that Christians have been killed by the security forces during a demonstration and the community has accused the authorities of failing to protect its members. The Tribunal noted that members of the Christian community who have been targeted by the authorities are most commonly persons who are politically active and those who attend demonstrations.
54. The Tribunal noted that human rights commentators have reported that Christians in Egypt are subjected to discrimination.¹ Human Rights Watch noted that discrimination against Egyptian Christians was continuing in 2010² and the United States Commission on International Religious Freedom reported similar conditions³
55. Amnesty International and the United States Commission on International Religious Freedom found that there has been a significant increase in violence against Christians since 2009.⁴ Al Jazeera reported more recently that there was “a perception of growing intolerance” in Egypt

¹ US State Department 2009, *International Religious Freedom Report 2009 – Egypt*, 26 October; US State Department 2010, 2009 Country Reports on Human Rights Practices – Egypt, 11 March

² Human Rights Watch 2010, *HRW Annual Report – Country Summary: Egypt*, January
http://www.hrw.org/sites/default/files/related_material/egypt_0.pdf – Accessed 1 February 2010

³ United States Commission on International Religious Freedom 2010, *Annual Report on International Religious Freedom*, May, p 232

⁴ United States Commission on International Religious Freedom 2010, *Annual Report on International Religious Freedom*, May, p 227; Amnesty International 2009, *2009 Annual Report for Egypt*, Amnesty International Website <http://www.amnestyusa.org/annualreport.php?id=ar&yr=2009&c=EGY> – Accessed 17 February 2010

with the increasing tension blamed on the “gradual Islamisation of education promoting a single, Islamic version of Egypt’s identity that belies a diverse cultural history”.⁵

56. The US DOS International Religious Freedom Report has reported a number of attacks on Christians,⁶ including the attack in Alexandria in January 2011 when a suicide bomber targeted a church killing 25 people and injuring over 200.⁷ The Middle East Report Online stated that on 6 January 2011 – the eve of the Coptic Christmas – a number of youths found a box which seemed to contain explosives outside the Church of St. Antonious in Minya.⁸ The Middle East Report Online predicted that the violence would continue.⁹
57. The Tribunal noted that Muslim leaders, including the Muslim Brotherhood, the sheikh of al-Azhar and other prominent members of the state-sponsored and independent Muslim clergy, have denounced the attacks against Christians.^{10 11}
58. The 2010 US DOS International Religious Freedom Report and the United States Commission on International Religious Freedom found that the police failed to prosecute perpetrators of violence against Christians^{12 13} However, the Tribunal also noted reports which indicate that the authorities have tried to protect the Christian community.¹⁴
59. The Tribunal noted that recently the Egyptian armed forces have been implicated in violence against Christians when they attacked and killed over twenty Coptic Christians during a protest. Human Rights Watch has urged the authorities to conduct a prompt, thorough and impartial inquiry.¹⁵
60. The Tribunal has considered other reports which indicate that violent incidents involving Christians and Christian targets have been continuing throughout Egypt since Mubarak stood down.¹⁶ The Tribunal noted that on 8 March 2011, thirteen people were killed when Christian and Muslim demonstrators clashed in Cairo. The *Los Angeles Times* reported that the military were slow to intervene and may have targeted Christian demonstrators.
61. The latest report by the US Department of State provided the following human rights assessment:

⁵ ‘Security fears for Egypt’s Copts’ 2011, *Aljazeera TV*, 7 January

⁶ US State Department 2010, *International Religious Freedom Report 2010 – Egypt*, 17 November

⁷ Tadros, M. 2011, ‘A State of Sectarian Denial’, *Middle East Report Online*, 11 January

⁸ Tadros, M. 2011, ‘A State of Sectarian Denial’, *Middle East Report Online*, 11 January

⁹ Tadros, M. 2011, ‘A State of Sectarian Denial’, *Middle East Report Online*, 11 January

¹⁰ Tadros, M. 2011, ‘A State of Sectarian Denial’, *Middle East Report Online*, 11 January

¹¹ ‘Egypt charges pro-Coptic activists’ 2011, *Aljazeera TV*, 5 January

¹² US State Department 2010, *International Religious Freedom Report 2010 – Egypt*, 17 November

¹³ United States Commission on International Religious Freedom 2010, *Annual Report on International Religious Freedom*, May, p 227

¹⁴ ‘Security fears for Egypt’s Copts’ 2011, *Aljazeera TV*, 7 January

¹⁵ Human Rights Watch 2011, Egypt: Investigate Violence Against Coptic Christians, 10 October, at <http://www.hrw.org/news/2011/10/10/egypt-investigate-violence-against-coptic-christians> accessed on 18 October 2011

¹⁶ ‘13 killed in Muslim-Christian clashes in Egypt’ 2011, *MSNBC*, 9 March http://www.msnbc.msn.com/id/41983220/ns/world_news-mideast/n_africa/# - Accessed 4 April 2011; ‘Islam and the Arab revolutions: A golden opportunity?’ 2011, *The Economist*, 31 March <http://www.economist.com/node/18486089> - Accessed 7 April 2011; ‘Who will defend Christians in Egypt?’ 2011, *The Whig Standard*, 27 March <http://www.thewhig.com/ArticleDisplay.aspx?e=3043828> - Accessed 7 April 2011

Impunity was a significant problem. Security forces were accused of using excessive force and intimidation in numerous incidents. For example, on October 9, military police and civilian thugs killed approximately 25 persons and wounded an estimated 330 during a demonstration in Cairo by Coptic Christians. Security forces also failed to effectively prevent or respond to incidents of societal violence... The most significant human rights problems during the year were attacks on demonstrators, violence against religious minorities, the use of military courts in civilian cases, and arbitrary arrest, especially as permitted under the Emergency Law.¹⁷

FINDINGS AND REASONS

62. The applicants claim to be citizens of Egypt. The Tribunal has considered the evidence they provided in support of this claim, including their Egyptian passports, and it accepts their claim that they are citizens of Egypt.
63. The applicants claim that they have been and will continue to be active members of the Coptic Christian community in Egypt and Australia. They claim that they have been involved in church based outreach and proselytising activities. The applicants claim that they were harassed and mistreated by the authorities and Muslim extremists in Egypt for allegedly assisting two Muslims to convert to Christianity. They claim that they will be targeted again for the same reasons if they return to Egypt. They further claim that they will be unable to practice their religion freely and safely in Egypt. They claim that Muslim extremists and the authorities in Egypt, will seek to harm them again, as they did previously, for religious reasons. They claim that they will not have access to a reasonable level of state protection in Egypt.
64. The Tribunal does not consider it appropriate to take an overly stringent approach to questions of credibility but neither does it consider it appropriate to accept all claims uncritically.¹⁸ The *Handbook on Procedures and Criteria for Determining Refugee Status*, suggests that it is “frequently necessary to give the applicant the benefit of the doubt... [but only after]... all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility”.¹⁹ In the present matter, the Tribunal has considered some inconsistencies in the written and oral evidence provided by the applicants to the Department. Those inconsistencies contributed to the delegate’s decision that the applicants’ claims lacked credibility. However, the Tribunal has formed the view that the inconsistencies arose due to the incompetence or negligence of the applicants’ former adviser. The Tribunal has found that in their oral evidence to the Department and the Tribunal the applicants have provided an entirely consistent account of their circumstances in Egypt. The Tribunal is satisfied that they provided a credible account of their circumstances.
65. The Tribunal accepts the applicants’ claim that they are Coptic Christians and active members of their church. It accepts that they were implicated in proselytising activities in Egypt which attracted the adverse interest of the authorities and led to their detention. The Tribunal accepts that the applicants’ religious activities in Egypt led to adverse interest from

¹⁷ US Department of State 2012, Country Reports on Human Rights Practices for 2011, 24 May

¹⁸ *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 per Beaumont J at 451, *Sivalingam v Minister for Immigration and Multicultural Affairs* (MIMA) (unreported, Federal Court of Australia, O'Connor, Branson, & Marshall JJ, 17 September 1998), *Aruliah v MIMA* (unreported, Federal Court of Australia, Marshall J, 1 October 1997) at 6, *Sellamuthu v MIMA* (1999) 90 FCR 287 per Hill J at paragraph 40.

¹⁹ United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status*, 1992, Geneva, paragraphs 203 and 204.

Muslims in the community who objected to their religious activities. The Tribunal accepts the applicants' claim that their family had to go into hiding to avoid further harassment from those sources.

66. The applicants claim that they will face similar harm in the future for the same reasons. The Tribunal has considered whether their fear of harm is well-founded.
67. The 'well-founded fear' aspect of the definition has a subjective and an objective element.²⁰ The subjective element of "well-founded fear" concerns the state of mind of the applicant. The Tribunal accepts that the applicant is afraid to return to Egypt for the reasons provided. Nevertheless, for a fear to be well-founded there must also be a factual basis for that fear. In *Chan v MIEA*, the court found that a well-founded fear "requires an objective examination of the facts to determine whether the fear is justified".²¹ It was further noted that whilst "there must be a fear of being persecuted, it must not all be in the mind; there must be a sufficient foundation for that fear"²² and that the Convention, "in speaking of 'well-founded fear of being persecuted', posits that there should be a factual basis for that fear".²³ A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation.²⁴
68. Information from external sources relating to current conditions in Egypt, and the circumstances of the Coptic Christian community, indicates to the Tribunal that despite the deteriorating security situation in Egypt, Coptic Christians are not commonly targeted by Muslims or the authorities in Egypt. The information indicates that there are approximately eight million Christians in Egypt and only a few have been targeted by Muslim extremists or the authorities. The Tribunal accepts that there have been incidents of sectarian violence since the 2011 uprising; and political and religious activists from the Coptic Christian community in Egypt have attracted the adverse interest of Muslim extremists and the armed forces. However, the Tribunal is not satisfied that these incidents are common or widespread. The Tribunal is not satisfied that the targeting of Christians has been condoned by the Muslim majority or the state in Egypt.
69. Nevertheless, despite the above considerations, the Tribunal has accepted that the applicants have been active members of their church and that they have been involved in proselytising activities. The Tribunal is satisfied that these activities would not have previously attracted the adverse interest of Muslim extremists or the armed forces in Egypt. However, the Tribunal has formed the view that with current conditions in Egypt, and the poor security situation, religious activists from the Coptic Christian community do attract adverse interest from Muslim extremists and the authorities. It finds that members of the community who engage in proselytising activities and those suspected of attempting to convert Muslims to Christianity, face an increased risk of harm from Muslim extremists and the authorities. The Tribunal has formed the view that the harm which Christian religious activists can suffer in Egypt, which includes arbitrary detention and physical harm, is sufficiently serious as to constitute persecution for Convention purposes. The Tribunal is not satisfied that currently, or

²⁰ *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 and *Minister for Immigration and Ethnic Affairs v Guo & Anor* (1997) 191 CLR 559

²¹ *Chan v MIEA* (1989) 169 CLR 379 per McHugh J at 429

²² *Chan v MIEA* (1989) 169 CLR 379 per Dawson J at 396

²³ *Chan v MIEA* (1989) 169 CLR 379 per Dawson J at 412

²⁴ *MIEA v Guo* (1997) 191 CLR 559 at 572

in the reasonably foreseeable future, the state can provide a reasonable level of protection to Christians who proselytise in Egypt. It finds that the applicants will not be able to practice their religion freely and safely in Egypt in the reasonably foreseeable future; and their fear of being subjected to circumstances amounting to persecution in Egypt is well-founded.

70. Accordingly, the Tribunal finds that there is a real chance that the applicants will be subjected to circumstances amounting to persecution in Egypt for reasons of religion.

CONCLUSIONS

71. The Tribunal is satisfied that the applicants are persons to whom Australia has protection obligations under the Refugees Convention. Therefore the applicants satisfy the criterion set out in s.36(2)(a).

DECISION

72. The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act.