

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**AT CHRISTCHURCH**

**REFUGEE APPEAL NO 76255**

**REFUGEE APPEAL NO 76313**

**REFUGEE APPEAL NO 76314**

**REFUGEE APPEAL NO 76315**

**REFUGEE APPEAL NO 76316**

**Before:**

A N Molloy (Member)

**Counsel for the Appellants:**

A James

**Appearing for the Department of Labour :**

No Appearance

**Dates of Hearing:**

2 October 2008, 28, 29, 30 April  
and 8 June 2009

**Date of Decision:**

30 June 2009

---

**DECISION**

---

[1] The appellants, nationals of Egypt, are a family comprising the father, the mother and three sons: AA, BB and CC. They have applied for refugee status, claiming that they would be seriously harmed if they return to Egypt because they are Coptic Christians. All five appellants claim that they have been targeted by a group of Islamic fundamentalists who have a vendetta against them. The group is said to have wide-ranging influence, and the appellants do not believe that they would be protected from the threat posed by that Islamic group by the Egyptian state. The claims advanced by the three sons contain an additional component. They say that if they return to Egypt they would be forced to perform compulsory military service. They object to doing so as a matter of conscience on the basis that they would be discriminated against as Christians either in the performance of their military service or in terms of the punishment they would receive for failing to

perform military service.

[2] All five appellants appeal against decisions of refugee status officers of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining their applications for refugee status.

### **PROCEDURAL HISTORY OF THE APPEALS**

[3] The family arrived in New Zealand in 2001, but did not apply for refugee status for some years. They claim that this was because they were advised to seek to remain in New Zealand through orthodox immigration channels. As a result the family members obtained a series of permits allowing them to remain in New Zealand for business and investment purposes, and as students. For reasons not relevant to these appeals Immigration New Zealand (INZ) eventually refused to renew their permits to remain in New Zealand.

[4] The oldest son, AA applied for refugee status before any of his family members. It is accordingly necessary to outline the history of these claims to explain how the five appeals came to be heard together.

[5] AA submitted a written application for refugee status in December 2007. He was interviewed by a refugee status officer of the RSB on 2 April 2008, when he provided a hand-written statement in support of his claim. It comprises a single page. The RSB issued its decision declining AA's application for refugee status on 27 May 2008.

#### Leave to appeal out of time

[6] AA lodged an appeal against the RSB decision on 27 June 2008. That was seven working days outside the time prescribed by the Immigration Act 1987, which states that an appeal must be lodged within 10 working days of the date of receipt of the RSB decision declining refugee status; see s129O(3)(b). AA applies for leave to appeal outside the prescribed time limit. He relies upon s129O(4) of the Act, which allows the Authority to extend that time where it is satisfied that there are "special circumstances". The Authority is satisfied that there are special circumstances in this instance.

[7] It appears that the RSB mistakenly forwarded its decision to an address which was no longer occupied by Mr Morgan, who was acting as AA's

representative at that time. That innocent error only came to light when Mr Morgan enquired with the RSB about when its decision might become available.

[8] As a result, AA did not actually receive the RSB decision until 27 June 2008. He claims that he would have appealed within the required period if the decision had been sent to the correct address. The Authority accepts that claim. It is borne out by the fact that his representative took proactive steps to find out about the decision, and also by the fact that an appeal was lodged almost immediately after the RSB decision was physically received. It is also consistent with the actions of the remaining members of AA's family who had all applied for refugee status around the same time.

[9] The Authority also takes into account the fact that the period of time in question is comparatively short. In the circumstances it would be artificial and unjust to consider appeals lodged by AA's parents and siblings, yet deprive him of the opportunity to be heard when the risks he claims to face arise out of circumstances identical to those upon which his family members rely.

[10] For all of these reasons the Authority finds that special circumstances exist for the purposes of s129O(4) of the Act. The late lodging of the appeal involved no fault on the part of AA. The time within which his appeal may be lodged is accordingly extended.

Adjournment of *Refugee Appeal No 76255*; consolidation with remaining appeals

[11] On 29 September 2008 Mr Morgan wrote to the Authority on behalf of AA. He indicated that additional information had come to light in connection with AA's appeal. When this was elaborated upon on the first day of the hearing of the appeal relating to AA, it became apparent that the mother and father were potentially witnesses who could give evidence relevant to AA's appeal. The appeal hearing was accordingly adjourned to explore that possibility.

[12] The timing of any such resumption was complicated further by the fact that the applications for refugee status lodged by the mother, father, BB and CC were under consideration by the RSB at the time that the Authority adjourned the appeal hearing in connection with AA.

[13] The mother, father and the remaining siblings lodged applications for refugee status with INZ on 25 June 2008. Each of them was interviewed by an

officer of the RSB on successive dates in August 2008. They have been represented by Mr James since they first applied for refugee status. (He has also acted for AA since January 2009).

[14] The Authority decided that it would be appropriate to wait until those claims had been determined by the RSB before hearing evidence from those witnesses in connection with the appeal relating to AA.

[15] The RSB published decisions declining the applications of the mother, father, BB and CC on 22 December 2008. Copies of the decisions were delivered to Mr James' office on 19 January 2009. They appealed to this Authority on 23 January 2009.

[16] Arrangements were then made to consolidate the hearing of all five appeals. A telephone conference was convened on 4 March 2009 to enable the Authority to discuss practical aspects of the resumption of the appeal hearing with Mr James. It was agreed that the hearing would require a further three days, and dates were agreed that were convenient to the appellants, counsel and to a proposed witness, Fr Sourial.

[17] All five appellants agreed that their appeals ought to be heard together. They confirmed that they each wished their evidence to be taken into account in connection both with their own individual appeals and also in connection with the appeals of the remaining family members.

[18] The hearing of AA's appeal resumed, and the hearings of the remaining appeals began, on 28 April 2009. All five appellants gave evidence in person. One additional witness, PQ, gave evidence. A second, Fr Sourial, was outside New Zealand at the time. The hearings were therefore adjourned again until 8 June 2009, when Fr Sourial was available to attend.

[19] The appeals turn in part upon whether the appellants' claims are credible and in part upon whether their claims are well-founded. Rather than outlining the account presented by each family member, their evidence is summarised in composite form. Their credibility is then assessed.

## **THE APPELLANTS' CASES**

[20] The appellants are Coptic Christians. Immediately prior to coming to New Zealand in 2002, they lived in Cairo. They were financially secure and lived in comfortable, affordable and well-located accommodation. The three sons attended a private school nearby.

[21] The father had spent several years working for a bank outside Egypt. He and the mother returned to Egypt to live when AA was a young child. The father took over his family's manufacturing business in Cairo. He ran this successfully for many years before purchasing a small working farm in a rural area close to Cairo in the mid-1990s.

[22] The mother worked as an accountant within a government department. She held that position for many years and left it only to travel to New Zealand with the remainder of her family in 2002.

### Discrimination

[23] The appellants all recounted experiencing a degree of discrimination in Egypt because of their Christianity. AA said that the Muslim community looked down upon them and frequently subjected them to harassment and differential treatment. Notwithstanding this, the father's businesses were successful and afforded the family a comfortable standard of living. In addition, they were able to practice their Christian faith without interference in a local parish community.

[24] AA said that many of the children of other families within that community attended the same school as he did. He also had many Muslim friends, however as he got older, many of them tried to exert pressure on him to convert to Islam. He said that it was common for Christians to be offered incentives to convert. They might be offered money, jobs or marriage partnerships. This was simply part of the way of life.

[25] None of these problems caused any great degree of concern or hardship, and the appellants would not have left Egypt when they did if it had not been for the events of late 2001-early 2002.

### Islamists

[26] The appellants claim to be at risk from a group of Islamic fundamentalists who first targeted them in 2001. The appellants came into contact with the

Islamists in the village where the family farm was located, approximately 50kms from Cairo.

[27] The father worked at the farm, and AA often accompanied him at weekends. Occasionally they would sleep the night in rudimentary accommodation on site. One night the father woke to the sound of heavy machinery. On investigating, he observed men operating earthmoving machinery along a strip of land adjacent to a nearby cemetery. They were excavating a hole into which they unloaded boxes from a truck. The boxes were then covered over with earth.

[28] The father did not see what was in the boxes. However he believed, from the nature of the exercise, that he would be better off making sure that no-one saw him watching. He did not tell any of his family members what he had seen until after he claimed refugee status in New Zealand.

[29] The father employed people from the local village as farm hands. One afternoon in mid-2001, two of those farm workers overheard AA being addressed by his first name. Because it is not a Muslim name the workers asked whether the family was Christian. The father confirmed that they were. Within a few days, a delegation from the village came to visit the family at the farm. They tried to persuade the family to become Muslim. They offered inducements and help in order to do so. The mother and father declined and indicated that they had no desire to convert or intention of doing so.

[30] Soon after this the father received a telephone call at his home. He was told that all of his livestock and farm machinery had been stolen from the farm. The father and AA went to the farm to inspect the damage. They reported the incident to the local police who then arrested the two villagers who were working at the farm.

[31] The father and AA spent the night at the farm to try to secure the property. They were forced to endure a terrifying attack launched by four men riding motorcycles and wielding sticks and knives. AA received a cut to his arm during the incident which ended only when people from the neighbouring farm intervened. The father believes that the attack was carried out by relatives of the men who had been arrested earlier that day. He claims that they belong to a group of Islamic fundamentalists with nation-wide reach.

[32] The next morning the father and AA lodged a complaint with the local police the before returning to Cairo. About a week later the father contacted the police to enquire as to progress with the investigation. The police urged him to withdraw his complaint because the individuals involved belonged to a dangerous organisation. Angry and frustrated at the lack of progress, the father lashed out verbally. He told the officer that the police should do their job properly. In frustration he told them to excavate part of the cemetery adjacent to his family farm, where they would find some boxes.

[33] When the police did so they found that the boxes contained weapons and ammunition. At that point, the police officer investigating the incident contacted the father and forced him, for his own safety, to sign an undertaking that he would never reveal this to anyone.

#### Subsequent problems

[34] During the months that followed, the family became the target of harassment, threats and attacks. On one occasion, a mob armed with sticks gathered outside the family's apartment building in Cairo. Fortunately, the building's security guard thwarted the attack. The father continually received threatening calls by mobile telephone. The wife and youngest son, CC, were the victims of separate assaults that could have been serious but for the intervention of other people in the vicinity at the time; the mother was the subject of an attempted abduction while on her way to work one morning, and was later robbed on the street; CC was the subject of an assault by two men who tried to abduct him outside his school. He was cut with a knife during the attack.

[35] The mother and father attribute their problems to the Islamic group whose members had been arrested following the robbery from the appellants' family farm.

[36] The family attempted to avoid these incidents by travelling to the homes of relatives and friends within Cairo and at various other towns and cities. However the father claimed that the Islamic group's reach is great, and on each occasion the family's location was identified in relatively short time and the threats resumed. On one occasion, the home in which they were living was fired upon.

[37] Eventually this became too much to bear. The father began to make enquiries of foreign embassies about where he could take his family. On approaching the British Embassy in Cairo, he learned that it might be possible to

obtain travel permits to come to New Zealand. He obtained passports for the sons and the family applied for visas to enter New Zealand. The family left Cairo in early February 2002 and arrived in New Zealand soon after.

#### Arrival in New Zealand

[38] Before leaving Egypt the mother had obtained the name of Father Sourial, a priest in the Coptic Church community in Christchurch. She made contact with him immediately after arriving in New Zealand. After considering their options with various members of the Coptic community, the family members decided that they would try to remain in New Zealand through orthodox immigration procedures. They sought and obtained work and study permits and, over a period of several years, entered into various business ventures in the hope of securing residence. For reasons that are not relevant to these appeals, all of these avenues eventually came to nothing.

#### AA's application for refugee status

[39] AA has been living independent of his family for some time. He entered into a relationship with a New Zealand citizen in 2006. They have faced difficulties in their relationship and have spent time apart. They now have children together. In late 2006 AA's work permit expired, meaning that he was no longer lawfully entitled to be in New Zealand. AA lodged a written application for refugee status with INZ in December 2007.

#### Applications for refugee status of remaining family members

[40] The remainder of the family were placed in a similar predicament in early May 2008, when INZ declined the mother's and father's applications for work permits. The four family members other than AA were issued with limited purpose permits to provide them with time to make arrangements to leave New Zealand. While reluctant to do so, they began to make plans to return home to Egypt. They had assumed that the risk that existed in 2002 had dissipated. It soon became apparent that this was not the case.

[41] The mother telephoned her family in Cairo in early May 2008 to let them know what was happening. She was shocked to learn that, far from forgetting the appellants, the Islamic group continued to monitor the family apartment in Cairo. In addition, they had recently posted flyers in the surrounding streets, offering



payment of a significant sum of money in exchange for information as to the current whereabouts of the father and AA.

[42] The mother's brother told the mother that it was not safe to return to Egypt. He sent a letter to Father Sourial by fax on 13 May 2008, transmitting copies of photos showing the posters at various locations in Cairo.

[43] After seeking legal advice the mother, father, BB and CC lodged applications for refugee status with INZ on 25 June 2008.

#### Evidence of PQ

[44] PQ is a national of Egypt who came to New Zealand in 2003 with his family. He is now a New Zealand citizen. PQ and his family are also Christians. Before coming to New Zealand, he had owned a successful business in Cairo that employed between 15 and 20 people, many of whom were Muslim.

[45] PQ experienced some discrimination while completing his compulsory military service in Egypt during the 1970s. He was allocated additional guard duties when it became apparent to others that he was Christian. Apart from such matters, PQ did not suffer any particular discrimination or difficulties. However he knows of many others who did. PQ decided to start a new life for his family in New Zealand because of his concern about the increasing difficulties faced by Coptic Christians generally, and how this would impact on the lives of his children in the future.

[46] PQ met the appellants for the first time after he came to New Zealand. They socialised as members of the same Christian community, and they have become good friends. PQ said that some time after he arrived in New Zealand the father related to him the circumstances that caused the appellants to leave Egypt, including the incidents on the farm and the subsequent difficulties that the family faced.

[47] PQ stated that Coptic Christians are subjected to just this type of problem in Egypt. He surmised that the families of the two farm workers would have felt disgraced by the arrest and detention of their sons and would be intent on seeking revenge against the appellants.

[48] In 2008, PQ returned to Egypt to visit family and friends. Before he left New Zealand the mother asked him to contact her brother, who had some photographs

for her. PQ contacted the brother while he was in Cairo, to make arrangements to collect the material. They spoke at length on the telephone. The brother became distressed during the conversation. He told PQ that he had gone to the appellants' apartment on one occasion only to be accosted by some men who asked after the appellants. He also referred to the posters seeking information as to the family's whereabouts. The brother told PQ that it was too dangerous for the appellants to return to Egypt and asked him not to let them do so.

[49] PQ did not suggest that he experienced any difficulties due to the fact that he is a Coptic Christian during his return to Egypt.

#### Evidence of Father Sourial

[50] Fr Sourial appeared in person to give evidence in support of the appellants. He confirmed the content of a written statement initially prepared in advance of the hearings in April 2009, which he signed and confirmed on 8 June 2009, the final day of the appeal hearings. He is the priest with responsibility for the diocese within which the appellants have worshipped since they came to New Zealand in 2002.

[51] Fr Sourial has presided in various parishes around the world. He was born and ordained in Egypt and returns there frequently. He has not personally encountered discrimination in Egypt but stated that he is probably shielded from such difficulties by virtue of his vocation.

[52] Fr Sourial first met the appellants the day they arrived in Christchurch in February 2002. When the mother contacted him by telephone he directed them to his home. He says that the appellants explained the problems they had encountered in Egypt, including the theft of livestock from their farm north of Cairo, the arrest and subsequent release of the farm-workers involved, the attack on CC, the attack on the mother and the fact that the police had told them to leave Egypt for their own safety.

[53] After considering the family's predicament Fr Sourial and other members of the local parish community advised them not to apply for refugee status at that time (that is, in 2002). He said that doing so could cause problems for their family in Egypt. Accordingly, the family members were advised to seek to remain in New Zealand by pursuing business opportunities. They attempted to do so.

[54] Fr Sourial also recounted receiving the facsimile from the mother's brother in 2008. He said he provided a copy of it to the mother the next time he saw her. He thinks that might have been the Sunday after it was received.

## **MATERIAL RECEIVED**

[55] In connection with the appeal relating to AA, the Authority received a letter from Mr Morgan dated 27 September 2008, attaching copies of various documents and photographs. The Authority wrote to Mr Morgan on 6 October 2008. He replied on 14 October 2008.

[56] The Authority received additional information in connection with all of the appeals. After appeals were lodged by the mother, father, BB and CC, the Authority wrote to Mr James on 26 February and 6 March 2009.

[57] It has received letters from Mr James dated 9, 15 and 22 April 2009; the latter of which enclosed opening submissions, witness statements, various items of country information and copies of correspondence and documents in Arabic, together with translations into English. Mr James also wrote to the Authority on 7 May and 12 May 2009.

[58] Further information was submitted when the hearing of the appeals resumed on 8 June 2009, including a witness statement signed by Father Sourial and a letter from the Bishop of the Melbourne Diocese to INZ dated 6 May 2009.

[59] Mr James forwarded additional country information under cover of a letter to the Authority dated 24 June 2009. He also forwarded a copy of a letter from a doctor at a hospital in Cairo, together with a translation.

[60] Finally, on 26 June 2009 counsel forwarded a translation of a document provided by Fr Sourial.

## **THE ISSUES**

[61] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[62] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

## **ASSESSMENT OF THE APPELLANTS' CASES**

### **CREDIBILITY**

[63] Before turning to consider the principal issues identified, it is necessary to determine whether the appellants' claims are credible.

[64] Putting to one side the claim by the three sons in connection with their obligation to perform compulsory military service, the appellants' core claims fall into two distinct but related parts. They claim to have been targeted by Islamic fundamentalists in around 2001. They also claim that these concerns either arose afresh or came to their attention again in 2008. For reasons set out in more detail below, the Authority finds these claims to be untrue.

[65] In summary, the Authority finds that the reasons the family came to New Zealand in 2002 may have been more accurately represented by the claim originally put forward by AA. At a point in time after AA was interviewed by the RSB in connection with his claim, it became apparent that the remaining four members of his family were no longer entitled to remain in New Zealand. At that point they too lodged claims for refugee status. The nature of their claims is fundamentally different from that originally put forward by AA. It is apparent that the mother, father, BB and CC have colluded in the fabrication of a false claim for refugee status. From the time that they did so, AA has altered his own claim to bring it into line with theirs. From that time he has colluded in the fabrication.

#### **Omission of core claim from AA's original accounts**

[66] The Authority has already referred to the fact that AA lodged his application for refugee status in December 2007. There are fundamental discrepancies between the basis upon which he originally advanced his claim for refugee status, before his parents and siblings lodged their applications in June 2008, and the basis upon which he now does so.

[67] As already outlined, the appellants, including AA, now claim that they became the targets of a group of Islamic extremists some time in 2001.

[68] However, the nature of AA's original claim was quite different. When he lodged his written application in December 2007 AA based his claim upon the fact that he did not want to perform compulsory military service.

[69] Neither his application form nor his statement made any reference to any problems with specific Islamists. He made no reference to the taking of livestock and farm machinery from his family farm; to the arrest of members of an Islamic group by police officers responding to a complaint made by the father; to a vicious attack which he and his father narrowly repelled that night; to the injury which he now claims to have received during the course of that attack; to the attacks on his mother or the attack on his brother CC; or to the attacks on the family at their home and as they travelled around Egypt trying to avoid the problems which had beset them.

[70] During his interview with the RSB, AA was questioned about his predicament and the predicament faced by the other members of his family. He spoke in general terms about Muslims and about compulsory military service. Although he did refer briefly to problems with Muslims at the farm harassing the children and the theft of chickens, which the police would not investigate because the culprits were "Muslim brothers", the original claim by AA was entirely silent as to any attacks on the family by Muslims or their pursuit across Egypt.

[71] At one point, the refugee status officer asked AA "When did you first start to fear living in your home country?" His reply made no reference to events that preceded his departure from Egypt. On the contrary, AA informed the refugee status officer his family came to New Zealand to give him and his brothers a better life.

[72] When the Authority put these apparent anomalies to AA for comment, he claimed that he was worried that he might create a risk if he spoke of these matters to the RSB. He also claimed that his father had told him and his brothers never to speak of such matters, but to leave them in the past. As a result, he said that it had not entered his mind that these matters could still cause problems for him or his family and so he did not refer to them.

[73] Both explanations are rejected.

[74] The reason AA was talking to the refugee status officer at all was because he seeks protection from harm. His claim that he did not want to identify the very harm from which he now says he is seeking protection is simply not credible. In addition, AA was unable to identify how he would have created a risk by referring to such matters during a confidential interview with the RSB, or how anyone would

find out that he had spoken of these matters. If his claims were true, he was creating a far greater risk by not disclosing them.

[75] The real difficulty with AA's attempt to justify his omissions is that he did refer to problems with local people on his family farm. However the manner in which he referred to them made it clear that whatever problems had occurred amounted to little more than a temporary irritation. When asked whether his family members had experienced any specific problems, he answered:

"No, dad got told once by police station once to seal farm and leave because Muslims won't leave kids alone. One day he got call from workers on chicken farm that chickens had been stolen – he rung police, they took the workers to police station to interview them and one of the workers was from Muslims brothers – part of aggressive group. We didn't know about it if we had we wouldn't have employed him. They're worse people than you want to get involved with – get really aggressive more than normal ones.... Officer said too dangerous to get him locked in, because his family will be upset."

[76] The fact that AA informed the RSB about the existence of a family farm, a problem with a farm worker associated with an Islamic group may indicate that there is some truth to such matters. The fact, however, that throughout his interview he omitted any mention of the attack on the farmhouse, his injury, the subsequent attacks on his mother, on his brother CC, or on the family members in general; that he did not suggest that his family had embarked upon a tour of various parts of Egypt in the hope of avoiding members of the Islamic group; and the fact that he did not suggest that his family had left Egypt as a result of these problems suggests that the subsequent references to such occurrences are entirely fabricated. That applies equally to the subsequent testimony of AA and that of the remaining appellants.

[77] If all the events that the family now relies upon were true, there is no plausible reason why AA would have omitted any reference to them in the claim form, in his written statement, or when invited to provide information at his interview with the RSB. Nor was there any plausible reason to conceal the fact that these events were the direct cause of his family's flight from Egypt.

[78] The fabrication of accounts is demonstrated further by a significant discrepancy between the account given by AA to the RSB, (before his remaining family members applied for refugee status) and the account he subsequently gave at the appeal hearing (after they did so).

[79] AA has two scars on a part of his body. He told the RSAA that one of the scars was inflicted during a fight with Muslim school friends when he was a teenager; the other during the attack on his father and him at the farmhouse. That contradicts the account he gave to the RSB, when he stated that both had been inflicted during a schoolboy fight with his Muslim friends.

[80] Again, if Islamists had injured AA during an attack on his family farm, there is no plausible reason why he would not have said so to the RSB.

#### Omission of contemporary developments from AA's account

[81] In early May 2008, the appellants (other than AA) informed their extended family members in Egypt that they intended to return to Egypt. The appellants claim that the mother was warned by members of her family in Egypt that it would be dangerous for the family to return. The manner in which this information came to light in connection with AA's claim is relevant to the assessment of credibility of all of the appellants.

[82] The Authority was advised of this renewed threat to the appellants in a letter sent by AA's then representative, Mr Morgan, who wrote to the Authority on 29 September 2008, three days before the first day of the appeal hearing relating to AA. Mr Morgan's letter referred to these issues as "new circumstances" over and above the reasons previously relied upon by AA in seeking refugee status. The source of danger was said to be the Islamic group that was still looking for the appellants in 2008, six years after the family left Cairo.

[83] Mr Morgan's letter outlined attempts made by the Muslim group to obtain information about the appellants, and the threats made to the appellants. He provided photographs of posters that had recently appeared in the vicinity of the family apartment in Cairo. The posters offer a substantial reward for information as to the whereabouts of the father and AA.

[84] It will be recalled that the RSB published its decision declining AA's application for refugee status on 27 May 2008.

[85] The mother's evidence during the RSAA hearing was that her brother confirmed the existence of the renewed threat in a letter forwarded by fax to Father Sourial on 13 May 2008. Father Sourial then passed it on to the mother. The appellants said that there had been a family meeting almost immediately after



the mother had been alerted to these new problems in mid-May 2008. This was confirmed during the appeal hearing by more than one of the sons, including AA.

[86] Despite this, no attempt was made to bring any of this new information to the attention of the refugee status officer determining AA's claim. If the information were true, this failure is extraordinary given that it is direct evidence of a contemporary threat to AA's safety.

[87] There were obvious opportunities to do so. The first arose when the refugee status officer forwarded an interview report to AA after interviewing him in April 2008. The purpose of the interview report was to outline the refugee status officer's understanding of AA's claim, and to invite clarification of any matters of concern before a final decision was made.

[88] AA submitted a detailed response to the interview report in a letter dated 18 May 2008. That was five days after Fr Sourial supposedly received the fax from AA's uncle and a week or more after his mother had supposedly received her first warning from her family in Egypt. In his letter, AA referred to the general situation for Christians in Egypt. He provided information about military service. He continued to emphasise the same aspects of his claim that he had throughout to that point and asserted that:

"Our decision to come to New Zealand has been made upon the discrimination we faced as a Coptic family who were being accused in our very basic right in our life which is the source of our income."

[89] It is telling that his letter contains no reference to the mother's telephone conversation with her brother, to the posters, the photographs, or to any danger additional to that already referred to during his RSB interview.

[90] Mr Morgan wrote to the RSB on AA's behalf more than a month later, on 26 June 2008. That letter is also notable in that it contains no reference to the new material. Nor had there been any attempt to raise this new development with the RSB during the interim period.

[91] While the risk demonstrated by the posters supposedly relates to the family in general, it referred to two people in particular. AA is one of them. If the posters were genuine and the risk alluded to in the letter forwarded to Fr Sourial by facsimile on 13 May 2008 truly existed, the value of such powerful, direct evidence of the risk of harm would have been obvious.

[92] The failure of AA to refer to this new information in good time simply throws into sharp relief the artifice upon which the appellants' claims are based.

Additional credibility concerns

[93] The appellant's accounts are also unsatisfactory in various other respects.

[94] For example, it is implausible that a localised dispute in a rural area should suddenly come to the fore again after six years. Further, the renewed activity of the Islamists monitoring the family in Cairo in such proximity to the need for the appellants to depart New Zealand is remarkably fortuitous.

[95] The father's claim that he observed the burial of munitions in a plot adjacent to his family farm also lacks credibility. This aspect of the family's evidence caused some difficulty for the appellants when they were interviewed by the RSB. It became apparent that the mother was unaware that the father claimed to have observed the burial of the boxes, that he had disclosed their existence to the police some time later, or that the police had forced him to sign a undertaking never to mention this to anyone.

[96] The Authority finds the father's evidence about these matters to be contrived; contributed to, no doubt, by the need to provide some kind of justification for the mother's lack of knowledge. So, for example, on the one hand the father claimed that observing this event caused him such concern that he could not disclose it to his family. Yet on the other hand, he was content to retain the farm and to allow his wife and children to accompany him there.

[97] Also contrived is the father's claim that he revealed this information to the police in a fit of anger. Then, after finding the boxes, the father claims that the police forced him to sign an undertaking never to reveal this to anyone. The point of the undertaking is not clear and it is implausible that the Egyptian police, who have battled Islamist insurgents for decades, would have required such an undertaking.

[98] Other aspects of the appellants' evidence are also contrived. For example, the facsimile, supposedly sent by the mother's brother to Fr Sourial on 13 May 2008, states:

"The reason for [the threat to the family's safety] is the problem that [the father] told you 6 years ago when he arrived to New Zealand and it is still there and continues."

[99] There is no particular reason why the mother's brother would be aware that the family had discussed these matters with Fr Sourial six years ago, or why he would be conscious of that conversation six years later. The content of the letter suggests that the writer had in mind that it would be produced for precisely this type of forum.

[100] Fr Sourial's evidence is also problematic in various respects. The Authority finds that he has exaggerated or embellished aspects of his testimony in a misguided attempt to assist the appellants.

[101] The appellants say that they did not claim refugee status when they first arrived in New Zealand because they were advised not to do so by Fr Sourial and members of the local Coptic Christian community in Christchurch. Fr Sourial supported this aspect of their account and stated that the family was advised to pursue an orthodox immigration route to remain in New Zealand, in preference to applying for refugee status. However, while he explained that applying for refugee status can create difficulties for the family in Egypt, he could not explain how this was the case. Specifically, he could not explain why anyone in Egypt would even find out that a claim had been made, and he prevaricated when asked.

[102] The Authority finds that his evidence is not spontaneously recalled, but is heavily influenced by the appellants. For example, when speaking to the Authority about the facsimile received from the mother's brother, Fr Sourial estimated that he had received it either late in 2008 or early 2009. In fact, according to the appellants, it was forwarded in May 2008, more than a year before he gave evidence about it to the Authority.

[103] That level of uncertainty can be juxtaposed against the content of his written statement, in which he was apparently able to recall, to the very day, the date on which he met the appellants more than seven years ago, and to record in detail the specific problems which they identified to him at that time.

[104] He confirmed that he had made no contemporaneous note of the conversations he had in 2002. He also confirmed, when asked by the Authority, that he had obtained some of the detail of these matters by consulting with the family prior to preparing his written witness statement.

[105] The Authority finds that he has prepared all of his statement in reliance upon the appellants. Fr Sourial's evidence cannot be relied upon to corroborate the appellant's core claim, and to the extent that it purports to do so, it is rejected.

### **GENERAL FINDINGS ON CREDIBILITY**

[106] The Authority finds that the core events in respect of which the family now claims to have a well-founded fear of being persecuted in Egypt are not true.

[107] The Authority specifically rejects the claim that problems the family experienced because of their ownership of a farm caused them to flee from Egypt in fear for their safety.

[108] The Authority rejects the appellants' claims that the father and AA were attacked one evening at the farm, and that AA was injured during that attack. The Authority rejects the claim that the mother was subsequently the subject of an attempted abduction, and the claim that CC was also the subject of an attempted abduction. The Authority rejects the family's claims that they travelled to various places in and around Cairo in an attempt to avoid further difficulties, and rejects the claim that they experienced any further difficulties during that time. The Authority also rejects the appellants' claim that the family has experienced any difficulties as a result of the father either observing the burial of munitions in a cemetery adjacent to the farm, or as a result of subsequently divulging that information to the Egyptian police.

[109] It follows that the Authority also rejects the appellants' claims that they are still the subjects of interest by any Islamic group.

[110] The Authority has not overlooked the photographs and correspondence produced in support of the appeal. However, as the Authority has previously observed, the ease with which certain types of documentary evidence can be obtained in order to support refugee claims, means that findings as to the reliability of documents will usually follow findings with regard to the credibility of witnesses; see *Refugee Appeal No 72570* (11 November 2002) and *Refugee Appeal No 75794* (23 May 2006) at [56].

[111] That is appropriate in the present appeals, where the posters depicted in the photographs could be easily manufactured and the authors of correspondence submitted to the Authority are not available for examination.

[112] Following the conclusion of the appeal hearing, the appellants provided a copy of a letter from a doctor at a hospital in Cairo, together with a translation. The doctor certifies that there is a record of treatment being administered to CC in late 2001. It states that, according to hospital records, CC received “stitches” to a cut. That letter takes matters no further. The doctor who signed it is not the doctor who supposedly saw CC in 2001. Even if the letter was genuine, it is simply a neutral document. While it is not inconsistent with the appellants’ claims, the letter provides no information about the circumstances in which the cut was received and, while it states that the matter was referred to police, it does not say why or whether the report led to any outcome.

[113] Finally, on 26 June 2009, counsel forwarded a translation of a “letter” provided by Fr Sourial. The letter appears to be more of a file note than a letter. It records basic elements of the claim as presented by the appellants, but does not appear to be addressed to anyone in particular. It also contains references to the “Appeal Authority” and to a “letter of the Arch Bishop” said to be “with the lawyer”. That may refer to the letter from the Bishop of the Melbourne Diocese to INZ dated 6 May 2009. Given those references, it appears that the document is of relatively recent composition.

[114] In short, none of the documents and photographs produced can be afforded any weight.

[115] The Authority has not overlooked the evidence of Fr Sourial or PQ. In short, neither the recollections of Fr Sourial nor the testimony given by PQ are sufficient to outweigh the glaring omissions in the evidence of AA.

[116] With respect to the evidence given by Fr Sourial, the Authority has already outlined its concerns.

[117] Turning to PQ, it is possible that he had a conversation with the mother’s brother in the terms he recounted to the Authority, and that he has merely been the victim of manipulation by the appellants and members of their extended family. It is also possible that he has embellished his account in a well-intentioned attempt to assist the appellants to stay in New Zealand. Either way, his testimony does not outweigh the fundamental problems already outlined in connection with the credibility of the appellants’ account.

## **SUMMARY OF FACTUAL FINDINGS**

[118] Having outlined the aspects of the appellants' claims that it rejects, the Authority reminds itself that their appeals are to be assessed upon the basis of facts found, not on the basis of facts rejected.

[119] The Authority accepts that the family are nationals of Egypt and that they are Christians of the Coptic faith who lived in Cairo before coming to New Zealand. The appellants were, by their own descriptions, a financially secure family. The mother and the father had well-paid and secure employment, and the three sons received good education opportunities at a private school.

[120] The Authority finds that the appellants have extended family living in Egypt, and that they may have an apartment to which they might return. It also accepts that they may have experienced a level of discrimination in Egypt, because they are Christian, but finds that any discrimination experienced prior to leaving Egypt did not amount to serious harm.

[121] The Authority finds that the three sons, AA, BB and CC, will be eligible for compulsory military service should they return to Egypt now.

[122] It is on the basis of these findings that their appeals will be assessed. The Authority reminds itself that the claim of each appellant must be assessed in its own right.

## **GENERAL COUNTRY CONDITIONS**

[123] The appellants referred the Authority to country information from various sources. This includes the United States Department of State *Country Reports on Human Rights Practice for 2008: Egypt* (February 25 2009) (the DOS Report), according to which Egypt has a population of approximately 80 million people, of whom somewhere between six and 10 million are Christian. Most of those are Coptic Christians.

[124] According to the DOS report, the government's respect for human rights remains poor. It states that respect for freedom of religion had declined during the year and that civil liberties were restricted. However, it also states that members of non-Muslim religious minorities officially recognised by the government (including Christians), "generally worshipped without harassment and maintained links with coreligionists in other countries" (p16).

[125] Counsel also cited the then most recent United Kingdom Foreign and Commonwealth Office report (Home Office Report), 15 August 2008, which refers to a “strong emphasis on national unity and tolerance between the Coptic and Muslim communities”.

[126] Other country information refers to attacks on Coptic Christians by members of extremist Muslim groups. The United States Commission on International Freedom *Annual Report 2008: Egypt* refers to an “upsurge” of attacks targeting Coptic Christians over the past two or three years (p223). However, on the basis of information he receives via regular official church publications from Egypt and information generally available on the internet, Father Sourial said that while such incidents did take place they were rare; perhaps half a dozen a year.

#### **FINDINGS WITH RESPECT TO RISK OF SERIOUS HARM FOR CHRISTIANS GENERALLY**

[127] The Authority accepts that Coptic Christians are, as a minority group, subject to discrimination even though this may not be condoned or promoted by the government. However, there is no evidence that the appellants or any members of their families have experienced serious harm tantamount to being persecuted in the past. More importantly, there is no evidence that they face such a risk if they were to return to Egypt now. The family will likely return to Cairo, where they have spent many years of their lives, and where they claim that they retain the lease on a comfortable low-cost apartment in a good area in Cairo. They have extended family available to help them with their process of reintegration and will be able to rejoin a large and established Christian community.

[128] It is also accepted that there are sporadic incidents of violence perpetrated by Islamists upon Christians in Egypt. It is impossible to rule out the possibility that any of the appellants might be in the wrong place at the wrong time and fall victim to such an incident. There are, however, several million Coptic Christians in Egypt. They are spread throughout the country, but are most heavily concentrated in areas such as Alexandria and in Cairo, where the appellants lived before and where they would inevitably return. Taking into account all of the country information available, the Authority finds that the prospective risk for any of the appellants of being subjected to serious harm in Egypt for reason only of the fact

that they are Coptic Christians is no more than random and speculative. It is not a real chance.

### **OBJECTION TO COMPULSORY MILITARY SERVICE**

[129] The three sons say that they do not want to perform their compulsory military service. They claim that if they do so they will face serious harm because of their Christianity. Counsel submits that AA and, by analogy, his brothers BB and CC, are effectively conscientious objectors in that they refuse as a matter of principle to serve a regime which subjects them to discrimination because they are Christian.

[130] Counsel submitted that the refusal of AA, BB and CC to perform military service would be essentially political acts of protest against the discrimination to which they are subjected by an Islamic society and government.

[131] Counsel sought to draw an analogy between the appellant in *Refugee Appeal No 75378* (19 October 2005) and the appellants in this case. Their respective circumstances are in no way analogous, however, for reasons set out below.

[132] The Authority, in *Refugee Appeal No 75378* (19 October 2005), held that a person who claims refugee status on the basis of a refusal to perform military service is neither a refugee *per se* nor excluded from the protection of the Refugee Convention (para [42] and see James Hathaway *The Law of Refugee Status* (1991) p179).

[133] The Authority also noted that there is no general right to refugee status arising from objections based upon religion or conscience. It then turned to the circumstances in which conscientious objection to the performance of military service might properly provide a basis for a claim of refugee status. It conducted that analysis in light of the human rights approach to “being persecuted” set out in *Refugee Appeal No 74665* (7 July 2004):

“The human rights standard requires the decision-maker to determine, first, the nature and extent of the right in question and second the permissible limitations which may be imposed by the state”.([115]).

[134] The Authority considered the right to freedom of thought, conscience and religion protected by Article 18(1) of the International Covenant on Civil and Political Rights (ICCPR). In finding that those freedoms may properly be the



subject of limitation under Article 18(3) of the ICCPR, provided that the limitations are prescribed by law and necessary to protect (amongst other things) public safety (ICCPR Article 18(3)), it held that freedom of religion or belief will not, per se, afford justification for refusing to perform military service.

[135] The Authority also found, however, that the limitations must be necessary and proportionate to achieve that aim. In addressing that issue, the Authority held that a state-imposed limitation upon the freedom to manifest one's belief under Article 18 of the ICCPR will not be necessary or proportionate to the protection of public safety where:

- (a) conscription is conducted in a discriminatory manner in relation to one of the five Convention grounds;
- (b) prosecution or punishment for evasion or desertion is biased in relation to one of the five Convention grounds; or
- (c) the objection relates to being required to participate in military action where the military engages in internationally condemned acts: *Refugee Appeal No 75378* (19 October 2005) [42].

[136] Each will be considered in turn.

#### Whether conscription conducted in a discriminatory manner

[137] The appellants have not supplied any specific country information as to what obligation any Egyptian citizen has with respect to compulsory military service. However, it appears that military service is by law compulsory in Egypt for all adult males between the ages of 18 and 30. The length of service might be between one and three years.

[138] The appellants have provided no evidence to indicate that being Christian makes it any more likely that the appellants would be called upon to perform compulsory military service or that compulsory military service is conducted in a manner that discriminates against Coptic Christians.

[139] Counsel submits that Christians are more likely to be required to complete the full three-year term. However, that submission is simply asserted without any evidence to support it. In that regard, the Authority notes that a decision of the Refugee Review Tribunal of Australia which counsel provided relates to an

Egyptian Coptic Christian who was required to perform only two years compulsory service: *RRT N 97/19868* [2000] RRTA326

[140] Counsel also submits that Coptic Christians are discriminated against while undertaking military service. He points out that the heads of the various divisions of the armed forces are Muslim and that Christians are restricted from holding senior positions.

[141] He also submits that Coptic Christians would be exposed to greater danger in the military, although he does not identify what that danger might be. In *RRT N 97/19868* [2000] RRTA326, which upheld a claim for refugee status by a Coptic Christian, the Refugee Review Tribunal noted that the applicant had experienced harassment and discrimination while carrying out military service. However that applicant was granted refugee status on the basis that Muslim fundamentalists had targeted him. The relevance of his military service was peripheral.

[142] The Authority accepts that the lack of Christians in the military hierarchy could arguably contribute to an environment within the armed forces in which Christians were discriminated against. However there is simply no evidence that there is anything other than a remote or speculative chance that Christians who are required to perform military service in Egypt face serious harm for reason of their religion; either in the form of physical harm or the cumulative effects of discrimination. In reaching that conclusion the Authority has not overlooked the article provided by AA to the RSB, referring to the apparent murder of a Coptic Christian while he was performing his military service.

#### Whether punishment inflicted in a discriminatory manner

[143] Counsel asserts that those who evade military service in Egypt may be subjected to a fine or imprisonment or both. However there is no evidence to suggest that the appellants would be more likely to be prosecuted, or that they would receive harsher penalties, than non-Christians who abscond during compulsory military service, or who fail or refuse to report for service. It is simply asserted that they would be unfairly treated by the justice system.

#### Whether Egyptian military engages in internationally condemned acts

[144] There is no suggestion that the Egyptian military is involved in such acts, and accordingly there is no evidence that the appellants face a real chance of being complicit in such acts.

[145] As noted, counsel sought to draw an analogy between the appellant in *Refugee Appeal No 75378 (19 October 2005)* where the engagement in internationally condemned acts was a live issue, and the appellants in this case. Their respective circumstances are in no way analogous. The basis upon which the appellant in *Refugee Appeal No 75378 (19 October 2005)* was recognised as a refugee is because there was evidence that the Turkish military was involved in military operations against the Kurds that attracted international condemnation. For that reason, the Authority found that conscription of that appellant would not be in pursuit of a legitimate aim. Therefore the fact that he would be imprisoned for refusing to comply with his military service obligation would be an unjustified limitation of his right to freedom of belief under Article 18(1) of the ICCPR.

[146] There is no evidence that the military of Egypt is involved in internationally condemned conflict, and accordingly the predicament of the appellant in *Refugee Appeal No 75378 (19 October 2005)* is not analogous to the predicament faced by AA, BB and CC.

## **SUMMARY OF FINDINGS WITH RESPECT TO COMPULSORY MILITARY SERVICE**

[147] It may be that each brother has an honestly held belief that he should not have to perform compulsory military service in support of the Egyptian state. However, the obligation to perform military service is established by Egyptian law. It can be justified on the basis that it is a necessary and proportionate law in pursuit of a legitimate aim under Article 18(3) of the ICCPR, namely public safety. It is therefore a justifiable limitation on the right to freedom of belief held by the appellants.

[148] Further, the limitation on freedom of belief is proportionate to the pursuit of public safety; it is for a period of up to three years and in practice may be less; there is no evidence that conscription laws are selectively enforced and there is no evidence that punishment for non-compliance is selectively enforced.

[149] The appellants have failed to establish that any sanction they might face for refusing to perform military service would amount to serious harm in the context of “being persecuted” or that it would be for a Convention reason.

### **SUMMARY OF FINDINGS**

[150] The appellants bear the responsibility of establishing their refugee claims pursuant to ss129P(1) and 129P(2) of the Act (as referred to in *Refugee Appeal No 72668/01* (Minute No 2) (5 April 2002) and *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA)).

[151] Taking into account all of the circumstances of each of the appellants, and considering their cumulative effect, the Authority finds that objectively, on the facts found, none of the appellants have a well-founded fear of being persecuted in Egypt.

[152] The Authority extends the time within which AA could lodge his appeal against the decision of the RSB.

### **CONCLUSION**

[153] The first principal issue identified for determination is answered in the negative in respect of all five appellants. That being the case, the second principal issue does not fall for consideration in connection with any of their appeals.

[154] For the above reasons, the Authority find that none of the appellants is a refugee within the meaning of Article 1A (2) of the Refugee Convention. Refugee status is declined in respect of each of them. Their appeals are dismissed.

“A N Molloy”  
A N Molloy  
Member