

1111399 [2012] RRTA 606 (13 July 2012)

DECISION RECORD

RRT CASE NUMBER:	1111399
DIAC REFERENCE(S):	CLF2011/118364
COUNTRY OF REFERENCE:	Egypt
TRIBUNAL MEMBER:	Suhad Kamand
DATE:	13 July 2012
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Egypt 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] July 2011.
3. The delegate refused to grant the visa [in] October 2011 and the applicant 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 file relating to the applicant. The Tribunal also has had regard to material referred to in the delegate's decision and other material available to it from a range of sources

Department file CLF2011/118364

20. In terms of previous travel he identifies "transit" travel through [details of travel and educational history deleted: s.431(2)].
21. He claims to have left Egypt legally [on a Marine visa]. He provides documents identified as copies of a Seaman's Passport issued by the Arab Republic of Egypt in the name of the applicant, identified as valid until [February] 2013; an Egyptian passport issued in his name [in] January 2008; and visas for [two different countries].
22. He seeks Australia's protection so he does not have to return to Egypt, and refers to an "attached statement" containing the detail of his claims. The only statement attached is a letter from his migration agent dated [July 2011], setting out submissions to the following effect (folio 2-3).
 - a. The applicant comes from a family consisting of 5 brothers and 3 sisters. His family is very religious and has ties with the Muslim Brotherhood (MB). Due to people in Egypt being prevented from speaking out or supporting opposition parties, all his brothers have been forced to reside outside Egypt.
 - b. His brother [Dr A] is a doctor in [Country 2] and he and his wife are staunch supporters of the MB. His other three brothers [names deleted: s.431(2)] all work as mechanics. [Two brothers] are employed in [Country 2] and [the

third] is in [Country 1]. He also had a brother by the name of [Mr B] who served in the military, was injured and died shortly after.

- c. He has [number, names and composition of paternal uncles deleted: s.431(2)]
- d. He has [a number] maternal uncles who are deceased, two of whom held prominent positions [in the military]. His remaining uncle [occupation details deleted: s.431(2)].
- e. Contrary to his family, however, the applicant has been a staunch supporter of the former Hizb Watany (official party of former president Hosni Mubarak, referred to below as the NDP – National Democratic Party) and vocal in his support of the former regime, voting for them and petitioning for their cause. His closest friends are [three names deleted: s.431(2)] who are vocal members and supporters of the NDP. His position placed him in opposition to his family, as their allegiances lied with differing political parties.
- f. He finished his schooling in [year deleted: s.431(2)] and served in the military in 2001. Although he was subsequently discharged and even married in 2002, he was still on call for the military and this was to last 11 years from the date of discharge. He was called in to serve three times since he was officially released. The applicant is rather afraid that should he return to Egypt he will be compelled to again serve in the military by force, just how he had been compelled the three previous times.
- g. He has a moral and political objection to serving in the armed forces this time round, due to his political belief and stance. He remains a “staunch supporter” of the NDP and believed that the army deposing of Mubarak and helping out the protestors was an act of treason. He views the way the army has been behaving since as very inhumane and degrading with no regard for human life. He has a moral and political objection to serving as a part of such forces and it is highly likely he will be compelled to do so, as he has been called up to serve three times to date even after exhausting the compulsory component of his military service.
- h. In 2007 the applicant began employment on a ship and visited different countries on official duties. His last trip began [in] 2011, at the same time as the unrest began in Egypt. He went from Egypt to [three different countries] and finally arrived in Australia. During the voyage the applicant was very vocal in his opposition to the armed forces and described their acts and words as major treason. He was warned many times by those on the boat to watch what he was saying and that, should the army or anyone associated with them hear of what the applicant was saying, he will be severely punished.
- i. During the voyage, the applicant was constantly receiving updates on the turmoil in Egypt and when he found out that the regime was finally deposed and those who supported it were being punished severely and ostracized, he knew he could not return to Egypt. Also, his vocal statements against the army meant he would be in deep trouble if he ever returned as the army are now in control of the country and have been abusing power, including arbitrarily arresting people and subjecting people to military trials.

- j. The applicant has also fled the boat he was on which means that he will be subject to a “brutal” punishment. The army will “no doubt” conscript him again as a punishment for his act of fleeing the ship and attempting to seek protection in Australia. Further to this, they will punish him severely for speaking out against them and inciting hatred of their actions while he was on the voyage.

Department interview - [September] 2011

23. The applicant was interviewed by a department delegate in respect of his claims [in] September 2011, communicating with the assistance of an interpreter in the English and Arabic languages. The tribunal has listened to an audio recording of that interview, summarised below.
24. The applicant indicated that he is certain that the information provided in connection with his protection visa application is true and correct. In reference to the typed submissions dated [July] 2011, he is aware of the claims that have been made and does not wish to correct or add to any of that information.
25. He confirmed his name and date of birth. He has never used any other identity. He arrived by boat in [port deleted: s.431(2)], Australia [in] May 2011. He came to Sydney because he knew it is the capital city. His wife and two children live in Egypt, as well as other members of his family. He speaks to his wife around once per week by mobile phone. He does not have family in Australia, nor any friends known to him before he entered Australia. He has lived in [suburb deleted: s.431(2)] since arriving in Australia. He lives with two friends who he has known since arriving in Australia. He met them and found his current address through an Egyptian man he met on the street in [suburb deleted: s.431(2)].
26. He is a seaman who works on a boat. The company he works for is [company details deleted: s.431(2)]. He started working for them in 2008. He worked as a mechanic on the boats. The people on the boat he was on came from Egypt. Sometimes there were foreigners on the boat but usually they were Egyptian. There were [number deleted: s.431(2)] people on the boat he came to Australia on. The people on the boat changed throughout the voyage and his employment.
27. He served in the Egyptian Army from [1999] until [2001]. He was discharged because his compulsory service had finished. He was called again three times, in 2004, 2005 and 2006. He was last in Egypt [in] 2011. Before leaving Egypt he had some problems because he was a follower of the NDP, and he had trouble leaving the country but his uncle helped him. When asked to elaborate on what his problems leaving Egypt were he responded that the date he was due to depart Egypt was already set before the revolution, but at the time of the revolution he was meant to be with the NDP. When asked to elaborate on the help he got from his uncle, he responded that his uncle helped him obtain the permit he needed to leave Egypt. Everyone who does military service must have a permit to leave the country which gives them permission to leave. When asked why he needed his uncle's assistance to get this he responded that he would be unable to leave the country without a permit and his uncle has many connections in Cairo. He repeated that his uncle had many connections in Egypt, including a person at the passport office in Cairo. At that time there was a revolution and all the passport offices got burnt so his uncle got the document for him from [a certain] office [before] he departed. When asked why the shipping company did not assist him with the documents he needed to travel, he responded that they only provide you with the visas but not the travel permit. The travel permit is valid for one month or three months. His was for one

month. The delegate put to him that he travelled for longer than one month on the boat. He responded that it is only something that immigration officers see when you depart Egypt. It is a document issued with the stamp of the military. Immigration officials just look at it and then throw it in the bin. When asked why they do that if it is valid for one or three months, he responded that it is just to show that you are not required to do your military service as you have already done it.

28. When asked if he had any problems with the authorities in Egypt before he departed in [2011] he responded that he was with the NDP and wanted to join the revolution, but it [started before he left]. He has never been arrested or detained by the authorities in Egypt.
29. When asked if he was politically active in Egypt he responded "no", however he was a member of the NDP since [2005]. It was easy for anyone to apply to become a member of that party. When asked to elaborate on the application procedure for that party, he responded that you give them a photocopy of your ID, a photograph of yourself and pay a membership fee. He was not a member of any other party in Egypt. He decided to join the NDP in [2005] because it had some advantages, including going on tours to places in Egypt which the NDP paid for.
30. When asked about some of the policies of the NDP he responded that it is just a party that supports the president and follows what the president says. When asked how the NDP supported the president he responded that, during elections for example, party members must vote for him and encourage others to vote for him. When asked to distinguish the NDP from other parties in Egypt he responded that the leader of the NDP is the president, Hosni Mubarak, himself. It is the party of the president. It is the most powerful party in Egypt and chooses parliamentary members. When asked again about the NDP's policies he responded that he was only a member, he has the membership card, he voted for the president and went with the parties on tours if invited. He has nothing to do with their policies. When asked how he supported the NDP other than by voting, he responded that he did "nothing", he only voted.
31. When asked about his parents' political views he responded that they did not have any. They did not support any particular party. His siblings also do not support any political parties and are against politics. He and his family have discussed the revolution but only amongst their family members.
32. He is no longer interested in Egyptian politics. When asked what has happened to the NDP he responded that, during the revolution the NDP forced people to go out and protest against the revolution and support Hosni Mubarak. Mubarak is now in hospital awaiting trial. When asked if he knows what the trial is for, he responded that Mubarak ordered people to be killed during the revolution. 7000 people got killed and Mubarak is accused of giving orders to kill protesters. When asked what he thinks about the trial, he responded that he thinks he will be sentenced to death but they are leaving him in hospital in case he dies before. When asked what his feelings are about Mubarak potentially being sentenced to death, he responded that, "of course", he deserves to be sentenced to death. In Egypt he had to support Mubarak because he was a member of the NDP. However, nobody in Egypt supports the NDP anymore because they treated people badly. All the high-profile leaders of that party are currently in prison. The party got dissolved and is no longer operating. The NDP used to support criminals to kill people during the revolution and cause problems for a lot of people. One day before the applicant left Egypt the NDP sent people to attack protesters in Tahrir Square. When asked what he thought about this as a member of the NDP, he responded that these things happened in Cairo. He was in a different area, called [Town 1] and left Egypt at

the beginning of the revolution, so luckily he was not asked to do anything in connection with this. He stopped supporting the NDP, but he kept this secret because he didn't want anyone to harm him. When asked if he supports any particular party in Egypt at the moment, he responded that there has not been time for political parties to form yet, however he would probably support the MB. He prefers the MB as the other parties do not treat Egyptians very well.

33. When asked what he thinks would happen to him if he returns to Egypt he responded that he will be harmed for sure because everybody hates members of the NDP. The army is ruling the country now and there is no difference between the leader of the SCAF and Hosni Mubarak. He may also be required to serve in the army again. He also has a brother who died in the army because he was not treated well. When asked why he thinks he would be harmed he responded that he was a member of the NDP and he may get called to join the army again. He thinks he will be called to military service again because he was on standby when he left. They no longer postpone your service and he may be taken to the army straight away on his return to Egypt. The delegate put to him that: he has indicated that it has been 11 years from the date he was discharged that he could be recalled for further military service, to which he responded "yes"; independent information indicates that the recall takes place within nine years from the date. He responded that it is 11 years and sometimes reaches 14 years. When asked what he thinks his chances of being recalled to military service are if he returns to Egypt he responded that, even if you are 90 years old you can get recalled to do military service. He has been called three times before. He was in the air force, in charge of network equipment.
34. When asked why he would not want to join the military again, given that he has joined them three times previously, he responded that it was compulsory for him to do this service before and he had an uncle in Egypt who was a brigadier in the army and who helped him during his military service. He had to do the repeated service otherwise he would be jailed. That uncle is now dead so there would be no one to look after him. Also his brother was injured in the military, did not get the treatment he needed and died. He is also a member of the NDP and everyone in Egypt hates NDP members. During the revolution threats were made that if people do not join the revolution they are traitors. The delegate put to him that independent information reveals that mainly high-profile Mubarak supporters and bloggers have been adversely targeted, and the delegate is wondering why the applicant would be targeted. He responded that he is known, in their area he lived in, to be a NDP member. Many members of the party in his area were threatened. The delegate reminded him that his support of the party only took the form of voting, that he was not very politically active, and he did not mention attending any meetings or specific tours. He responded that he is still known to be a NDP member and had to support them even if he did not like them.
35. The delegate adjourned the interview to allow the applicant to confer with his representative. On resuming he mentioned that he has another problem, as he did not return with the ship that he came here on, he could be jailed because of that. This is in addition to fearing military service. He objects to returning to the army because it had to support Mubarak and attacked people who were protesting. The leader of the military is similar to Hosni Mubarak.

Delegate's decision

36. In a decision dated [October] 2011, the delegate found that the applicant is not a person to whom Australia has protection obligations. In respect of his claims to fear imprisonment for deserting his vessel in Australia the delegate found that this is a criminal matter and is not Convention related. In relation to his claims that he would be called for military service he

found that there is “not a strong likelihood” that he would be recalled given that he is aged [age deleted: s.431(2)], has already undertaken compulsory military service between [1999] and [2001], and been recalled in 2004, 2006 and 2006. He also found that, even if he was to be recalled for compulsory military service it would be pursuant to a law of general application which is not applied discriminatorily or for a Convention reason. Nor did the delegate accept that any punishment the applicant would face for evading conscription would be applied discriminatorily for a Convention reason. In relation to his claims to have been a supporter and member of the NDP, the delegate identified credibility concerns and found that the applicant does not have strong views in respect of the military authorities in Egypt and was not satisfied that he would engage in political activities which would put him at risk of adverse attention of the Egyptian military authorities. The delegate was not satisfied that any past claimed political activities engaged in by the applicant would place him at risk of harm by the Egyptian military, nor that he genuinely fears such harm. The delegate was not satisfied that the applicant’s claimed fear of persecution for a Convention reason was well-founded.

Tribunal file

37. The applicant sought this Tribunal’s review of the delegate’s decision [in] October 2011, and was again represented by the same migration agent who represented him before the department. A copy of the delegate's decision record was attached to the review application.
38. Movement records obtained by the Tribunal indicate that the applicant was granted a subclass 988 visa [in] April 2011 and entered Australia [in] May 2011. He has remained in Australia since that time.
39. By letter dated [February] 2012 the applicant was invited to appear before the Tribunal [in] March 2012 to give evidence and present arguments.

Tribunal hearing – [March] 2012

40. The applicant appeared before the Tribunal [in] March 2012 as scheduled, and was accompanied by his migration agent. He communicated through the assistance of an interpreter in the Arabic and English languages. A summary of his oral evidence follows.
41. He produced to the Tribunal his Egyptian passport and stated that: it contains his correct identity details; all stamps, markings, labels contained in it are official and have not been unofficially altered. He also has a seaman’s passport which is at home. That passport was also issued by the Egyptian authorities in 2008.
42. He is able to read some English, however his protection visa application and the submission dated July 2011 were prepared with the assistance of his current migration agent. He wrote a statement in Arabic which he gave to his agent who translated it into the English submissions provided. He is confident that the information in his protection visa application form and the claims made in his agent’s submissions are true and correct. He does not know of any mistakes, however, during his department interview he did not mention some aspects of his story.

43. In relation to his residential addresses in Cairo he explained that the address in [Town 1] is his father's address and the Cairo address is the applicant's rented address. Between [2008] and [2011] he was living between both addresses.
44. Both his parents continue to reside in [Town 1]. All his brothers reside outside Egypt, comprising: his brother [Dr A] who is a doctor [in Country 2], where he has lived for around 15 years. [Dr A] went there [for work]. [Two of his other brothers] have also lived in [Country 2] for one or two years, and went there to work. They are [occupation deleted: s.431(20)]. When asked if they had any reasons for leaving Egypt, other than for work, he responded that they were very devout religiously and had problems with their work in Egypt. When asked to explain the link between their religious commitment and employment in Egypt he repeated that they are religiously committed and had no freedom to work in big companies in Egypt because of that. When asked to explain this further he offered that [two brothers] did not join the army so they couldn't work [names and ages deleted: s.431(2)]. This would only be discovered if they got seized. In such cases they would be compelled. Usually, when a person turns 31 and has not completed compulsory military service they must apply to get a certificate which says they are exempted, which these brothers got. They had to argue their case before a judge who decided how much to fine them. The fine can be between 1000 and 2000 Egyptian pounds. His brothers were fined 1000 Egyptian pounds each. The Tribunal noted that they seem to have been fined the lowest amount payable, and asked the basis on which that fine was calculated. He responded that the fine is imposed based on each person's circumstances. When asked to elaborate on his brothers' circumstances which resulted in the lowest fine being imposed on them he responded that [one brother] didn't like the army and justified why he did not want to serve. He was religiously strict so it was easy to be granted an exemption. He looked poor and was not wearing gold jewelry, so they also accepted his brother was financially poor.
45. [One brother] has been living in [Country 3] for around 5 years. He went there because he was young and wanted to go. When asked what visa he has permitting him to remain in [Country 3] he responded that he went on a Tourist visa and is awaiting the outcome of his residency visa. He did not have any particular reason to leave Egypt. He left there in 2006.
46. He gave evidence that none of his brothers left Egypt other than for work. However, in addition, he repeated that they were very committed religiously and before the revolution the rules in Egypt were very strict and it was hard to find work. When asked how their religious commitments impacted their employment in Egypt and how prospective employers would know of their religious commitment he offered that his family had a [asset deleted: s.431(2)]. The Tribunal put to him that it is trying to understand his brothers' reasons for leaving Egypt. He responded that life was hard in Egypt. It was expensive and their religious commitment meant there was no work and no customers. When asked again to explain the link between their religious commitment and work he repeated the above.
47. His brother [Mr B] is deceased. He was injured during his army service. [health details deleted: s.431(2)] but passed away around 6 years later, in around 2004.
48. He has 3 sisters who are married and residing in Egypt. His wife lives with her own parents in [Town 1], Egypt.
49. He identified the un-translated document at folio 4 of the department file as his NDP membership card. He read out the contents of the card, which the interpreter communicated as: the name of the applicant, his membership number, section "[section details deleted: s.431(2)]", issue date [2005], and the name of the [secretary of the prefecture]. His original

membership card is in Egypt. His maternal cousin emailed this copy to him. Membership to the NDP is not time-limited.

50. When asked about his current contact with his brothers he offered that he does not have any, as his NDP membership caused problems for both him and his wife amongst his family as they are religiously committed. His brothers do not approve of his NDP membership, nor do their wives, 2 of whom live with the applicant's parents in [Town 1]. Recently, his wife was "persecuted" in Egypt because of the applicant's NDP membership. When asked to elaborate he offered that his wife and child were "bashed" because he belongs to NDP. When asked who bashed them and when this occurred he responded that, after the revolution the media was blaming the NDP. So his parents and his brothers' wives came to where his wife was living, which was at his parents' home, and they had an argument and told her to leave their home and go and live with her own parents. When asked if he is saying that his parents and brothers' wives "bashed" and "persecuted" his wife he responded that they didn't bash her, but they told her she cannot live with them anymore and told her and his children to go and live with her parents. He was asked several times to identify when this occurred, to which he responded "after the revolution" When the Tribunal insisted that he tries to be more specific he offered that it was maybe 2 or 3 weeks after the revolution. He did not mention this to the Department because his mind was not focused and he was psychologically unwell.
51. When asked if his family members belong to or support any political party or movement in Egypt he repeated only that they are religiously committed. He added that they are not members of any party but they do endorse the MB. When asked whether his brothers expressed their support for the MB in any particular way when they lived in Egypt he responded that under Mubarak there was no MB, but his brothers verbally endorsed them.
52. When asked if his parents were or are politically active in Egypt he responded that all his family backs the MB. When asked why he supported the NDP if all his family supported the MB he responded that the NDP was the biggest and most influential party in Egypt. He joined in 2005 because he liked its youth and employment policies. It dealt with all of Egypt's issues. His view was that they were heavily involved in employment issues. He thought they were the best to govern and boost the economy. When asked what NDP policies he supported he responded that he was encouraging others to join the NDP by telling them it is useful and that the NDP is striving to solve youth problems, work and employment issues, and is good for the economy. When asked to give an example of the NDP work and employment policies he supported he restated the above. The Tribunal put to him that he is just repeating words to the effect that he promoted the NDP to friends on the basis of policies regarding employment, youth etc, however the Tribunal is interested to hear some examples of how the NDP was good for youth, employment etc. He responded that the NDP was the biggest party in Egypt. Anwar Sadaat founded it and was known for his peaceful spirit. The economy was bad in Egypt and the NDP made Egypt better.
53. When asked how he showed his support for the NDP he commented that he was trying to make the party known to his friends and was explaining to them the NDP and its situation by word of mouth. He told his friends who they could take their concerns to, and gave the Tribunal the names of two NDP secretaries in his local area. These were people with whom citizens could raise concerns.
54. The Tribunal asked what he thought or thinks of Hosni Mubarak and the NDP's past treatment of opposition movements in Egypt, such as the MB, given his brothers' claimed religious devotion and his family's claimed support for the MB. He commented that there were no persecutions between them then and Egypt was very stable. There was a lot of

surveillance by the Egyptian government at that time, and good censorship. The NDP was led by Mubarak. The Tribunal put to him that independent sources indicate that there were periods of intense crackdown on the MB by the NDP and Egyptian state when many MB members and suspected sympathizers were detained. When asked what he thought of this given that part of a family supported the MB he responded that they are not really members and did not have any membership card or attend meetings. His brothers were religiously committed but not active participants in the MB.

55. He continued living at his father's home in Egypt before leaving for Australia even though his politics was opposed. He offered that there was no issue between the NDP and the MB at that time. The Tribunal put to him that this seems inconsistent with widely reported problems for MB members, supporters and suspected supporters of the MB under the Mubarak regime. He responded that outspoken MB people were detained, but that doesn't mean everyone in the MB would be detained. It was after the revolution that there was chaos between the MB and the NDP.
56. When asked if he knows what the status of the NDP in Egypt is now he responded that it is dissolved, and by law, members could not run in the recent elections. When asked for his views about the NDP being dissolved he responded that just because there are some corrupt members of the NDP it doesn't make it all bad. The foundations of the NDP were good.
57. When asked if he supports the removal of Mubarak as the Egyptian leader he responded that his (the applicant's) views are of no effect, Mubarak has already gone and there are presidential elections coming up. "Their" view is that he did nothing for the country, but for 30 years no country came close to Egypt. People say that for 30 years, Mubarak was useless. He repeated that the NDP is not necessarily bad just because there are some corrupt people.
58. The Tribunal put to him that Mubarak is reportedly being accused of giving orders to shoot protesters in Tahrir square in February 2011, and asked what he thinks about Mubarak having to face those charges. He responded that people always say Mubarak was behind the orders to shoot and are attributing these acts to the NDP and are persecuting the NDP and placing the blame on it for any problem. When asked if he is pleased or thinks it is a good thing that Mubarak is facing trial he asked why he would be happy about that and added that many protesters were shot. Many aspects are unknown but there was a lot of fear and chaos and they have placed the blame on Mubarak. Similarly, when the Mespero incidents occurred they blamed Mubarak. He and the NDP are being blamed for anything that goes wrong in Egypt. At the moment anyone can kill anyone without trial and the NDP is blamed.
59. He did not vote in the recent parliamentary elections. When asked who he would have voted for if he was in Egypt he responded that he does not know what is going on there so he doesn't know who he would have voted for. The Tribunal put to him that it is concerned that when he is asked for his personal view he gives the impression of trying to avoid giving them, which is of particular concern given the strong personal views expressed in his written submissions.
60. The Tribunal put to him that the recent Egyptian elections have been very extensively reported outside Egypt and it is not difficult to get information about the situation in Egypt including emerging political parties and the political environment taking shape. It is being reported on the TV, radio, newspapers, internet. The applicant then commented that he does not know what is in people's minds, but he knows that the person who deserves to be elected is Ahmed Sahafi who was the civilian air force Minister. He deserves to be voted in because he has a big brain and good ideologies and is best to preside over the airline companies.

When asked to elaborate on his ideologies he responded “politics” When he speaks to the media he is worthy of governing. He is open-minded. If one of the MB holds power or presides over the country, it is religiously fanatical and it will be bad for the country. When Sahafi ran the airline company it was first in the world. He will be a good manager for the economy or it will become like Sudan which has had civil war. There is Chaos in Egypt now and if the MB rules the country will suffer.

61. When asked if he supports any particular party now he responded by asking how he can support a party while he is in Australia. When asked who his thoughts support he responded that, if there was a party like the NDP he would support it, ie a party which could lead the country, a party which is general and unanimous. All the present parties are private and personal, but Egypt needs a nationally recognized party.
62. Since leaving Egypt he has expressed political views on the boat he worked on, saying that the army betrayed Mubarak. The army was on Mubarak’s side before the revolution and then betrayed him by siding with the people. There were many discussions about this on the boat involving him and Egyptian crew members. The director of the maritime company the applicant worked for was [name deleted: s.431(2)], who was also a corporal in the army and president of the company. He was aware of the applicant’s views. When asked what he thinks about the Egyptian army now, he responded that they are traitors because they betrayed Mubarak, and if they can betray the president they can betray anyone.
63. In relation to his military service between 1999 and 2001 his role was to [work details deleted: s.431(2)]. He completed his compulsory service in 2001. He was recalled 3 times for periods spanning one month, 20 days and 15 days on respective occasions in 2004, 2005 and 2006. He received another recall request in 2008 but did not attend as he was outside Egypt. He was meant to return but as long as he is outside Egypt the recall can be dropped. Since 2004, the periods of his recall have comprised reminders in training of how to be ready in an emergency or war. When asked why he could not get an exemption from military service like his 2 brothers he responded “why should he apply for an exemption”, as there is no problem for him joining in the army, but his brothers considered the army to be a problem for their political and religious views. He did not. After the revolution, however, the army has changed, and he objects to joining the army now because it is a traitor and he is known to have spoken negatively about the army. Also, he escaped from the boat which is managed by the army. Also the crew knew of his views against the army. Also, his brother [Mr B] was injured and insulted and died after serving in the army. He is also known to have been a member of the NDP and people want revenge against the NDP. Also, his wife and child were persecuted and kicked out because of his membership to the NDP. He confirmed that the “persecution” his wife and child experienced is the confrontation he referred to earlier between his wife and family.
64. When asked what he thinks his punishment would be if he refused a fourth recall by the army, he responded that he will be jailed.
65. He gave evidence that, since arriving in Australia he has spoken to his housemates about his political views regarding Egypt and the NDP. These people have different views from him.
66. The Tribunal put to the applicant that: it has a legal obligation to put to him certain information which, subject to his comments or response, would form the reason or part of the reasons for finding that he is not a person to whom Australia has protection obligations; it has listened to the audio recording of his department interview [in] September 2011, which records him giving oral information; it must explain its relevance and possible consequences

and he will have a right to request additional time to respond. In that interview he is recorded as: being asked if he was politically active in Egypt, and responding to the effect that he was not, but he became a member of the NDP [in] 2005 because it had practical advantages such as going on tours that they paid for; when asked to comment about policies of the NDP his responses appeared vague, to the effect that they support the president and support what the president says; when asked to elaborate he responded that he was only a member, votes for the president, goes on tours and has nothing to do with their policies; when asked how he supports the party other than by voting, he responded that he does nothing and only votes; when asked about his parents' political views he responded that they do not have any, nor do his siblings and that they are against politics and do not support any political party. That information is relevant to the review as: it appears inconsistent with the claims set out in his representative's written submissions which describe: him as a staunch and vocal supporter of the NDP who petitioned for their cause; and his family members including his brothers as having ties to the MB and being forced to reside outside of Egypt because they were precluded from speaking out or supporting opposition parties within Egypt. The information is also relevant because it does not appear consistent with what he has said today regarding his own and his family's political views and activities. The consequence of the Tribunal relying on that information may be that it doubts the truth and credibility of the claims and evidence advanced, not only in respect of those specific issues, but more generally. The seeming differences between his oral evidence to the department and his written submissions appear so significant that they cause the Tribunal to question whether the written submissions are based on his own circumstances, or whether they have been fabricated.

67. The applicant responded that he would like to respond immediately and offered that his brothers are religiously committed but he did not say that they were prevented from travelling because of that religious commitment. The Tribunal clarified that this was not the nature of the information on that point, and that his agent's written submission is that his brothers decided to leave Egypt because they were prevented from speaking out or supporting opposition groups within Egypt, which appears different from the information he gave the department regarding his brothers' political views and actions. He responded that his brothers are all working in a different industry from him, but it was difficult for them to work in Egypt because of the situation with the government and their commitment and endorsement of the MB, but he did not say they were prevented from supporting the MB.
68. The Tribunal clarified that the information put to him as follows: his written submissions indicate that his family was very religious and had ties with the MB and because people in Egypt were prevented from speaking out or supporting opposition parties, all of his brothers have had to reside outside of Egypt; that seems very different from what he is recorded as telling the department to the effect that his parents do not have any political views, do not support any political parties, nor do his siblings, who are also against politics. The applicant responded that: during his department interview he was psychologically down and was distressed about how his family had treated his wife in Egypt; he has given evidence of his membership to the NDP; if he wasn't afraid of returning to real risk and death in Egypt why would he stay in Australia, given that he had the opportunity to go to Canada and could have gone to [another country] where he has been on three occasions, and he could also have gone to Europe; the NDP is now dissolved and he will now face problems because of his former NDP membership; he will face problems because of the army; he will face problems because of the boat. If he did not face real danger in Egypt he would not have applied to remain in Australia.
69. When asked if he has any further comment regarding the adverse information put to him regarding his own political activities in Egypt and his understanding of the policies of the

NDP he asked for clarification of the information but interjected continuously while the Tribunal attempted to repeat this information to him. He commented that the information he gave to the department was given when he was psychologically down and unfocused because his wife was insulted and kicked out by his family, and he should not be quoted on his words, and he had real problems in Egypt because of his escape from the boat, his negative views of the army, and he was completely unfocused during his department interview and that is why his evidence was vague as he could not concentrate.

70. When asked if he informed the department what happened to his wife in Egypt he responded that: he was not fully alert and did not know what he was saying; the delegate also said that he spent 13 months in the army, but he actually spent 26 months however the applicant did not notice as he was not concentrating properly at the time; the delegate also did not mention anything about his brother's death and if the applicant was focused he would have given all his information and a more comprehensive picture of what happened. When asked if he feels like he needs a break now he responded that he does. The Tribunal put to him that it understands it would be difficult for him to hear the Tribunal's concerns, but they must be put to him so that he has an opportunity to comment. He responded that he wants to know the Tribunal's concerns so he can respond. In the Tribunal allowed a short adjournment at this point.
71. When the hearing resumed the applicant was asked if there is anything further he wishes to say about the adverse information presented to him before the adjournment. He repeated his previous responses.
72. The Tribunal put to him that it has further concerns it also needs to put to him in a similar format pursuant, ie, explaining the information, its relevance and consequences before inviting his response, which he again has a right to request extra time to provide, or may provide immediately. He commented that it is hard to give his responses to all the information as there are many points made at the same time, which confuses him. The Tribunal explained that legally he must be informed as to why the information is relevant and how it could be relied on by the Tribunal, and his provision of comments before that it is explained to him would be premature.
73. The Tribunal put to him that, in the audio recording of his department interview he is recorded as saying he is no longer interested in Egyptian politics. He interjected that he was psychologically down because his wife and children were at risk in Egypt. The Tribunal put to him that it will consider that response but it needs to put to him the totality of the information, its relevance and potential consequences. He repeated that: the Tribunal seems to be putting to him concerns which don't take into account that he was psychologically tired at the department interview because of his wife and children being at risk and there being big anarchy and chaos in Egypt; if he was fully focused and alert he wouldn't have said he served in the army for 13 months, he would have said 26 months. The Tribunal repeated that it has a legal obligation to put the information to him and will consider his comments and responses in relation to that information.
74. The Tribunal repeated that the audio recording of his department interview records him as saying that he is no longer interested in politics; during the revolution the NDP asked members to demonstrate in support of the regime and against the revolution; Mubarak is facing trial for giving orders to kill around 7000 people and faces the death sentence for making those orders; when asked what he thinks about Mubarak facing such a sentence, responded that "of course" Mubarak deserves to be sentenced to death; in Egypt he had to support Mubarak because he was a member of the NDP but people in Egypt no longer

supports the NDP because it treated people badly and supported criminals to kill people during the revolution; he no longer supports the NDP; when asked if he supports any political party in Egypt is recorded as saying that he has not been in Egypt for a long time but he would probably support the MB because the other parties do not treat people very well. The applicant interjected that he was asked who he supports and because he was psychologically down he said he supports the MB because people are saying the NDP were perpetrating killings and criminal acts against people. But he was not really fully alert and aware of what he was saying and said that he supports the MB.

75. The Tribunal continued that the information it put to him is relevant because it appears inconsistent with his claim that he is a staunch supporter of the NDP and that he considers the removal of Mubarak to be a treacherous act by the army. He interjected again that he has repeated many times that he was psychologically down and not aware of what he was saying. He added that it was treason because the army was with Mubarak before and then turned against him.
76. The Tribunal continued that the possible consequence of it relying on the information put to him and any apparent inconsistencies in evidence can lead to doubts about the truth or reliability of the information provided. He interjected again that his information to the department was adversely impacted by his poor psychological state at the time, and stated that the Tribunal is going round in circles by continually referring to information he gave while he was in a poor psychological state.
77. The Tribunal again explained that there are legal procedures that it must follow in putting certain adverse information to him, which it hopes his representative will have explained to him. The Tribunal put to him that this information is put to him in a particular way to ensure fairness, and to ensure that he understands the nature, relevance and possible consequences of certain adverse information before the Tribunal. It explained that he has a right to request additional time to respond, although his conduct suggests a desire to respond immediately. Notwithstanding that, the Tribunal put to him his right to request additional time to respond.
78. The Tribunal asked whether he would like a short break now to consider his responses to the information put to him. He asked whether it is possible to provide the information and responses in writing. The Tribunal put to him that it will consider that request as we continue today and return to this point later. He commented that it is unfair to not give him the opportunity to defend himself and give his responses. The Tribunal put to him that that is why this information was put to him today. When asked why he thinks he needs extra time to respond in writing and why he would like the information put to him in writing, he responded that he needs time to summarise the information and put it to the Tribunal and he does not know why the Tribunal does not believe him. Even if he previously said that he does not belong to the NDP and has no political activities, he was under pressure and was not focusing and was not fully alert, however the Tribunal continues to insist on these points, and asked why the Tribunal doesn't see his point and take his response and his rights into account from the human rights point of view.
79. He added that he would not want to stay in Australia if he did not have problems in Egypt. He was working in the biggest companies in Egypt. In Australia he has to study for four more years to work in his profession. He is here because of his problems in Egypt.
80. The Tribunal put to him that the hearing has continued for several hours and it would appear more fair to adjourn and return on another day, and it hopes that his agent will, in that time, explain to him the procedures that the Tribunal must follow in putting certain adverse

information to him, and that it is not necessarily a matter of believing or not believing what he is saying. It repeated that it is a legal requirement, that certain apparent inconsistencies are put to an applicant so they have an opportunity to comment. He asked whether he should kill himself so that people believe him. He added that he is in danger, is a [occupation deleted: s.431(2)] and was actively working in Egypt. He was a top [occupation deleted: s.431(2)], and is unhappy with the situation of anarchy in Egypt and the situation his wife and children are in. Australia is a country of freedom and democracy and is not a fanatical country. When the Tribunal was saying what he said was illogical he responded that he was psychologically down at the time, but the Tribunal insists on "suffocating him". The situation in Egypt is clear and he does not know what he can do to convince the Tribunal. The Tribunal put to him that it referred to certain information appearing "inconsistent" and did not use the word "illogical", and that he is welcome to request a copy of the hearing recording at the conclusion of today's hearing and to listen to it before appearing again.

81. The applicant's representative asked if it is possible for the Tribunal to put its concerns in writing so they do not have to return on another day. The Tribunal indicated that it has issues regarding the applicant's case which are not only 424A or 424AA issues, and that the hearing must afford an applicant an opportunity to comment on all issues, which accordingly will require the Tribunal to invite him to attend a resumed hearing. When asked if he has any particular concern about proceeding in a way he responded that he does not. The hearing was adjourned.

Resumed hearing - [June] 2012

82. By letter dated [April] 2012 the applicant was invited to attend a resumed hearing [in] June 2012. The applicant appeared before the Tribunal on that date and time and communicated with the Tribunal through the same interpreter who assisted during his first appearance. The applicant's representative did not attend. A summary of the oral evidence provided follows.
83. At the commencement of the hearing the Tribunal explained to the applicant the legislative changes surrounding the introduction of complementary protection legislation on 24 March 2012 and the nature of complementary protection.
84. The Tribunal asked the applicant if there have been any developments in respect of his claims he wishes to communicate to the Tribunal. He referred only to the changing situation in Egypt and that his wife and children continue to live with her father.
85. In relation to his army service in Egypt he explained that he completed his longest period of service [in] 2001, after 26 months. He was called for service on a fourth occasion in 2008 but was outside Egypt at the time so he didn't have to do it. If a person is outside Egypt when they are recalled and don't appear for service within 15 days they just don't have to do the service on that occasion. If he was in Egypt at the time he was recalled and did not do the service he would have been penalised.
86. The Tribunal put to him that: independent information indicates that Egyptian men aged between 18 and 30 must serve between 12 and 36 months in the armed forces, plus nine years in the reserves¹, which suggests that Egyptian men can be recalled for a period of 9 years

¹ Egypt's military: key facts' 2011, *CNN*, 14 February <http://articles.cnn.com/2011-02-14/world/egypt.military.facts_1_military-aid-air-force-air-defense?_s=PM:WORLD> Accessed 30 March 2012. The *CIA World Factbook*, updated 6 March 2012, also lists these military service requirements: 'Egypt' 2012, *CIA World Factbook*, 6 March <<https://www.cia.gov/library/publications/the-world-factbook/geos/eg.html>> Accessed 30 March 2012

from the time they complete their 12-36 month period of military service; his agent's written submissions state that a person's military service duties cease 11 years after completing their initial period of service, which, on the basis of his oral evidence that he completed that service [in] 2001, would indicate that his military service obligations will cease in [2012]. He commented that his brother [Dr A] was recalled after 15 years and that the period can be extended in emergency conditions. He also stated that the penalty for not doing service when recalled is imprisonment.

87. In relation to this the Tribunal put to him: independent information to the effect that persons living abroad who have skipped military service (though not necessarily at the end of an exemption period) can pay a fine to amend their military status but that such persons must be over the age of 30, and that the fine is in the order of around \$580²; if this applies to the initial period of compulsory military service which Egyptian men aged 18-30 must do, it would seem disproportionately severe for people who fail to comply with a recall request are imprisoned.
88. The applicant commented that he understands the fine for not doing any military service is around 1000-5000 Egyptian pounds but that this is different from being recalled. The fine is only applicable for men who are over 30 and have not served in the army at all in their life. If those people are caught they will be sent to the military barracks, but people who have done compulsory service but do not comply with a recall request are treated more severely.
89. The Tribunal put to the applicant that: independent information regarding exemptions from compulsory military service indicate that an exemption is available if all other male siblings live outside Egypt and the person being called to service is the only male supporting the family³; his oral evidence to the Tribunal is that all his living brothers reside outside Egypt,

² An article published 18 January 2012 in the United Arab Emirates (UAE) English daily *Khaleej Times*, reported that Egyptians who had skipped military service while living in the UAE can now pay a fine at the Egyptian embassy in Abu Dhabi to amend their military service status. All those above 30 years of age were reportedly eligible to apply. According to Egypt's Ambassador to the UAE, these persons "need not worry about returning home as their military service position shall be amended to avoid any possible punitive measures": Shaaban, Ahmed 2012, 'Egyptian youth can amend military service status now', *Khaleej Times*, 18 January http://www.khaleejtimes.com/displayarticle.asp?xfile=data/theuae/2012/January/theuae_January459.xml§ion=theuae&col – Accessed 30 March 2012. Egypt's military attaché in Abu Dhabi reportedly told the *Khaleej Times* that, instead of traveling to Egypt, eligible persons can appear before the military judicial commission in the embassy, pay a fine (estimated at Dh2,163 – AUS \$568): (Dh is the unofficial abbreviation of the UAE Dirham) According to the OANDA website's, 'Currency Converter' <http://www.oanda.com/currency/converter/> Accessed 30 March 2012, and amend their military position and be released. The same services were reportedly being provided in Bahrain, Kuwait, Amman and Riyadh: Shaaban, Ahmed 2012, 'Egyptian youth can amend military service status now', *Khaleej Times*, 18 January http://www.khaleejtimes.com/displayarticle.asp?xfile=data/theuae/2012/January/theuae_January459.xml§ion=theuae&col Accessed 30 March 2012. Likewise, a report by CNA, published April 2011, provides the following (unreferenced) information:

Refusal or evasion is punishable by up to one year in prison. Because many young Egyptian men work abroad for extended periods, it is not uncommon to reach the age of 30 without serving. These expatriates can pay a fine (\$580 in 2004) to avoid compulsory service. Dual citizens and only sons or breadwinners are exempted: Meyerle, Jerry, Mike Markowitz, Hilary Zarin, Chris Jehn, Nilanthi Samaranyake, Lonn Waters, Brian Ellison, Bill Rosenau 2011, *Conscription in the Afghan Army: Compulsory Service versus an All Volunteer Force*, April

³ Department of Foreign Affairs and Trade 2010, *DFAT REPORT 1114 - EGY36041*, 3 March stating that:

“Exemption reasons include:

Exemption for family reasons: This exemption applies where the individual has no other male siblings; is the only supporter of the family; has brothers who have migrated and is the only one supporting the

so if he was recalled while inside Egypt it appears he could rely on this exemption. He responded that he has already done 26 months of military service so this exemption would not apply to him now. If his siblings lived outside Egypt when he was called to do his 26 months of service he could have relied on the exemption. Now it is irrelevant.

90. The Tribunal put to him that, based on the oral evidence he gave the Tribunal during his last appearance, the 3 instances in which he has served a recall to military service have spanned a few weeks, to a maximum period of one month, and involved only a recap of emergency training. From this it appears that recall periods are relatively short and would not involve him in anything more than a recap of certain procedures. He responded that it is impossible to know this, there is no maximum period for recall service and it depends on what the army requires.
91. In relation to his claims of fearing harm in Egypt for jumping ship, he offered that: the penalties he faces come from the company he worked for which has paid for his airline tickets and other expenses; he has signed a contract which has conditions requiring him to pay back all his expenses or spend time in prison if he cannot pay.
92. The Tribunal put to the applicant that: neither he or his representative have provided independent information regarding the nature of the penalties applied for ship-jumping; the independent information sourced by the Tribunal is fairly dated, being from 1996, but indicates, in information obtained by the Australian Department of Foreign Affairs, that in Egypt ship jumping from a government line is not a crime and someone who jumped ship at a foreign port would not be prosecuted under Egyptian criminal law, however, some "administrative penalties" might apply from losing one's job, payment of a fine imposed by the shipping line, or subjection to a civil suit for recovery of losses incurred to the shipping line as a result of the act of jumping ship⁴.
93. The applicant repeated that the options in the contract he signed with his company are that he must either pay for the expenses or go to jail. Also, the company is owned by [name deleted: s.431(2)] and other influential and powerful people who are high profile, and he has also spoken against the army and this in itself is a crime.

family; has a brother already serving in the military; has a father or brother who has died during their military service. Other family circumstances may also be considered. This exemption is renewed every three years for reassessment of the situation until the subject is 30 years of age, at which time he receives a permanent exemption.”

⁴ A DFAT cable dated 19 August 1996 relating to the Egyptian government's attitude to 'ship jumpers' states the following:

According to sources in State Security and sources in the legal profession, ship jumping from a government line is not a crime and someone who jumped ship at a foreign port would not be prosecuted under Egyptian criminal law. According to State Security, however, some "administrative penalties" might be incurred (arising we presume from contractual obligations with the shipping company), from losing one's job, payment of a fine imposed by the shipping line, or subjection to a civil suit for recovery of losses incurred to the shipping line as a result of the act of jumping ship. Our sources thought that the shipping line would be unlikely to pursue the latter course of action: Country Information Report No. 737/96 - Egypt: ship jumpers, RRT Information Request EGY21095, (sourced from DFAT 19 August.

We are unable to ascertain the precise involvement of State Security in ship jumping cases, but given that it is not a crime, we were given the impression that State Security would have little interest in pursuing ship jumpers for that act. It is possible that the shipping line might inform State Security of the incident but we are not able to ascertain what action State Security would then take.’

94. The Tribunal put to him that he informed the Tribunal when he last appeared that he is a highly qualified [occupation deleted: s.431(2)], and asked why he would not be able to pay off what he owes the shipping company he worked for. He asked how he would pay it and where he would work. He asked the Tribunal if it knows how much his fine would be. The Tribunal put to him that it does not and asked if he does. He responded that his contract required him to sign a blank document so they can put whatever amount they want to as a penalty. They may ask for payment of his return airline ticket. He added that his wife is not staying with his family and has no money to support herself and he has not worked for a year in Australia and is having trouble financially supporting himself.
95. When asked how he has been supporting himself financially in Australia he responded that his Egyptian friends living in Australia have been supporting him. He did not know these people before coming to Australia. When asked if he is saying that these friends are paying his rent and expenses for food, clothing and other expenses he responded that his wife sold her wedding jewellery and sent around \$3000 to him through friends. His rent is around \$150 per fortnight. The Tribunal put to him that he has given a mobile phone number so he must also have mobile phone expenses. He responded by asking the Tribunal whether it expects him to not contact his wife and child. The Tribunal put to him that it is trying to understand his expenses in Australia as it seems that \$3000 would not cover his expenses for long. He repeated that his friends help him and added that: he has not seen any human rights in Australia; others he knows are granted protection visas within 8 months and he still does not have an answer on his application nor any financial support from the Red Cross.
96. In relation to his claims to fear harm because of his former membership to the NDP, the Tribunal put to him that it was unable to find independent information to indicate mistreatment, discrimination or harm suffered by former NDP members since the fall of Hosni Mubarak simply because they were NDP members; however there are reports that senior NDP members who were key figures of the former Mubarak regime have been arrested and face trial on a variety of charges related to alleged corruption and abuses of power.⁵
97. The applicant responded that only Mubarak and El Adly have been convicted and nothing has happened to the other high profile people. Now anger against the NDP in Egypt is higher.
98. In relation to his claims to fear harm for having spoken against the Egyptian army following the fall of Mubarak, the Tribunal put to the applicant that Egypt is experiencing one of the most politically charged environments it has had in decades, and that there are many people expressing their political opinions, including against the army. In such a context, the Tribunal asked why anyone in Egypt would have any particular adverse interest in his views. He responded that everyone wants revenge against the NDP and he was a member. He added that there is a political mess in Egypt and they may dismiss the supreme council and bad things will happen soon in Egypt.
99. The Tribunal noted that when he last appeared before the Tribunal he asked for some of the adverse information put to him then to be communicated in writing; while the Tribunal considers that the information was put to him as required by law, it has put some of that information in writing for him as requested. The Tribunal handed the applicant a letter

⁵ 'Egypt trials: Mubarak officials' charges and verdicts' 2011, *BBC News*, 28 September <http://www.bbc.co.uk/news/world-middle-east-14389223> - Accessed 7 October 2011; Sharp, Jeremy 2011, *Egypt in Transition*, Congressional Research Service, 23 August, p.8 <http://www.fas.org/spg/crs/mideast/RL33003.pdf> – Accessed 12 September 2011; 'Egypt court acquits three Mubarak ministers' 2011, *Al Jazeera*, 5 July <http://english.aljazeera.net/news/africa/2011/07/201175111239347361.html> - Accessed 7 October 2011

pursuant to section 424A of the act and indicated that his written response is required by [a certain date in] June 2012. It explained that it will take into account the oral comments and responses provided during his last appearance, however this letter simply gives him a further opportunity to comment in writing. If he opts not to comment in writing the Tribunal will finalise the matter on the basis of the evidence before it. A copy of the Tribunal's letter is at folios 72-73 of the Tribunal file.

100. The applicant repeated that he was not well psychologically during his department interview and that this is clear from him not saying that he did military service for 26 months, and that he feels that the Tribunal is not taking that into account.

Information provided after the hearing

101. In relation to the Tribunal's letter referred to in paragraph 100 above, [in] June 2012 the Tribunal received a fax, which was not on letterhead, from [the applicant's representative], identifying the only contact number as the agent's mobile number. The fax requested an extension of 2 weeks to respond to the Tribunal's letter "because of my personal medical reasons as I attended the clinic of a heart specialist last Thursday and I need to attend the clinic of two health specialists on [two occasions] this month. This is also because of the complexity of preparing the needed information required to support the MRT review."
102. The Tribunal did not allow the extension of time, informing the applicant of this and enclosing information about free immigration advice services he may wish to contact. In a fax dated [in] July 2012, on the letterhead of [the migration agent], the Tribunal received the following submissions "in response to a number of the matters raised in [the Tribunal's] letter of [June] 2012" In summary, it was submitted that: a number of factors collectively contributed to the applicant's inability to focus on questions put to him during his department interview; [in] December 2008 the applicant was working on a ship which was boarded by Somali pirates, and he witnessed a "terrifying confrontation" involving violent clashes resulting in one engineer being shot in the leg and the crew being saved only due to the assistance of [another] ship; [in] May 2010 the applicant fell on his head while working on a ship and was unconscious for 4 hours, and was required to take one month's bed rest; [in] [2011] the applicant suffered from a highly contagious eye condition which required him to stay in a hotel room for 6 days; these afflictions have taken a heavy toll on the applicant's health and have resulted in a worsening psychological, emotional and medical state which seriously impacted his ability to focus during his department interview. He attaches two medical prescriptions as evidence and references the applicant's inability to provide current medical reports to his inability to access Medicare. The representative also offered that the interpreting during the department interview was "not up to standard" and that the interpreter did not always accurately convey what he was told, and that this, combined with the applicant's fragile psychological state, made it difficult for the applicant to understand the questions put to him. The fax indicated that a further letter would be sent to the Tribunal "shortly", however, at the time of finalising this decision no further information has been received by the Tribunal.

FINDINGS AND REASONS

103. In summary, the applicant seeks Australia's protection so that he does not have to return to Egypt where he claims to fear harm: as a staunch and vocal supporter and vocal member of the former NDP; as a person who has spoken out against the Egyptian armed forces; as a ship-jumper. He claims to fear being recalled for military service which he does not want to do for various reasons identified as political reasons, his late brother being injured and

insulted by the army, and because the applicant jumped ship and the ship was managed by the army. For the reasons set out below, the Tribunal has significant concerns regarding the truth of significant aspects of the applicant's claims and evidence, and based on the totality of the evidence before it, including the cumulative concerns detailed below, is not satisfied that the applicant is a person to whom Australia has protection obligations.

104. The mere fact that a person claims fear of persecution or significant harm for a particular reason does not establish either the genuineness of the asserted fear or that it is "well-founded" or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision-maker is not required to make the applicant's case for him or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70.)
105. The Tribunal finds the applicant's evidence regarding significant aspects of his claims to be highly contradictory. While he offered explanations referenced to his mental and physical health, the only medical evidence he provided in support of these explanations were 2 pieces of paper described by his agent as scripts for medication issued to the applicant in Egypt in 2009 and 2010 from the [psychological centre and location deleted: s.431(2)]. However, the name of the person to whom that medication was purportedly issued, the reasons for which the medication was issued and the impact, if any, of the medication or claimed medical conditions on the applicant's ability to give evidence, is also not specified in that documentation. Further, the applicant only raised his delicate psychological state when significant contradictions in his evidence were put to him by the Tribunal. His agent also mentioned, only in submissions dated [June] 2012, that the quality of the interpreting during the department interview was "not up to standard", but did not detail which specific aspects of the department interview were miscommunicated. The Tribunal notes that the applicant was asked at the commencement of his first appearance before the Tribunal whether he is confident that the information he has given orally and in writing in connection with his protection claims is true and correct and whether he is aware of any mistakes he would like to correct. He did not refer to any defects in interpreting occurring at his department interview, stating only that he failed to mention a few things during that interview. Nor did he refer to his evidence being compromised by his delicate psychological state at that point. His agent's submission regarding the interpreting during the department interview is unsupported by the applicant's own oral evidence to the Tribunal in which he did not deny that he gave conflicting evidence in his department interview and did not raise concerns about interpreting defects. The applicant's representative also referred to a range of traumas suffered by the applicant including witnessing clashes with Somali pirates in 2008, falling on his head in May 2010 and being unconscious for 5 hours, and suffering from an eye condition in [2011]. The Tribunal notes that none of these incidents were mentioned by the applicant himself or at any point prior to the representative's fax dated [June] 2012, nor were any of these claimed experiences supported by independent evidence. While the representative has offered his own conclusion that these incidents have adversely impacted the applicant psychologically, the medical basis for his opinion is not specified. It is further noted that, when the applicant repeatedly referred to his compromised psychological state during his appearances before the Tribunal, he referenced this only to the chaos in Egypt and his concern about his wife and children being asked to leave his parents' home. For the cumulative reasons identified above,

and in the context of the significant and extensive concerns detailed below, the Tribunal considers the explanations offered above to be unconvincing.

106. Firstly, the applicant informed the Tribunal that: his written claims, specifically his agent's submissions dated [July] 2011 (detailed at paragraph 23 above), were based on an Arabic statement the applicant prepared himself which his agent then translated into English; he is confident that the information and the claims articulated in those submissions are true and correct; the information he gave orally during his department interview was true and correct.
107. However, as put to him under sections 424A or 424AA, what emerged from his department interview and oral evidence to the Tribunal was a series of significant inconsistencies between the applicant's oral evidence and his written claims which cumulatively, as reasoned below, impress the Tribunal as so significant that they raise doubts regarding the truth of the claims made and the reliability of the evidence provided. The nature of the concerns and inconsistencies are so significant that they also raise doubts about the applicant's awareness and understanding of the written claims made on his behalf by his agent.
108. The applicant's written claims were that his family is very religious and has ties with the MB and that, due to people in Egypt being prevented from speaking out or supporting opposition parties, all his brothers have been forced to reside outside Egypt. However his oral evidence to the Tribunal referenced the emigration of his siblings from Egypt almost entirely to job prospects and appeared unconnected with his written claims. When pressed on why his brothers left Egypt he offered that life in Egypt was hard and expensive, and repeated that his brothers were religiously committed. He attempted to link his siblings' job difficulties in Egypt to their religious commitment but was unable to detail what that link was, his evidence varying between explanations tied to military service obligations and to vague references to not having freedom to work in big companies in Egypt because they were religiously committed. While he also offered that it is difficult in Egypt to work without having completed military service and without having a certificate of exemption, he contradicted this by stating that his brothers were given exemptions from military service and only had to pay the lowest fine.
109. In relation to his claimed political activities and allegiances in respect of the now dissolved NDP, and the political affiliation of his family members to the MB, the applicant's evidence was similarly contradictory, changing and unconvincing. On the one hand his written claims are that: in Egypt he was a "staunch", "active" and/ or "vocal" supporter of Mubarak and/or the NDP, he "petitioned for their cause"; he considers Mubarak's removal to be a treacherous act by the army; his family members are "staunch" supporters of the MB. However, as put to him under sections 424AA and/or 424A, his oral evidence to the department significantly departed from these claims. In particular he informed the department that: he joined the NDP because it had some practical advantages such as tours around Egypt which the NDP paid for; he had nothing to do with the NDP's policies while in Egypt and only voted for them and went on free tours; he did nothing for the NDP in Egypt other than voting for them; he is no longer interested in politics; he wanted to join the 2011 Egyptian revolution but the NDP asked its members to demonstrate in support of the regime and against the revolution; when asked what he thinks about Mubarak facing the death penalty for giving orders to shoot at protesters in 2011 he is recorded as responding that "of course" Mubarak deserves to be sentenced to death; when in Egypt he had to support Mubarak because he was a member of the NDP but people in Egypt no longer support that party because it treated people badly and supported criminals to kill people during the revolution and he no longer supports the NDP; neither he, nor his parents or siblings have any political views nor do they support any political parties; his siblings are "against politics"; when asked if he currently supports any

political party in Egypt he is recorded as saying that he has not been in Egypt for a long time but would probably support the MB because the other parties do not treat people very well. The applicant did not respond to the substance of these concerns when they were put to him by the Tribunal, offering only that he was in a difficult psychological state during his department interview and should not be quoted on what he said at that time. He also offered, through his representative's written submissions dated [June] 2012, that the interpreting during his department interview was "not up to standard", and that the applicant had suffered a range of traumas making his evidence to the department unreliable. For the reasons given above, the Tribunal finds those explanations and responses unconvincing, and considers the above information to raise serious doubts as to the truth and credibility of significant aspects of the applicant's claims and evidence.

110. His oral evidence to the Tribunal was that his siblings and parents are "religiously committed" but that they do not belong to or support any political party, although they do "endorse" the MB. However, when asked to elaborate on whether his brother's expressed their support for the MB in any particular way he responded that there was no MB when his brothers were in Egypt but they verbally endorsed them. This evidence impresses the Tribunal as vague and evasive and does not support the applicant's written claims that members of his family are "staunch" supporters of the MB or that there has been any conflict between himself and his family members because of their political differences.
111. When the Tribunal asked the applicant why he supported the NDP if his entire family was in favour of the MB he offered that the NDP had good policies and he liked their employment and youth policies. However, despite being asked on several occasions, he was unable to elaborate on what those policies were or give examples of what he considered to be good NDP policies.
112. When asked, during his first Tribunal appearance about his current political views, his evidence impressed the Tribunal as evasive, offering that his views are of no effect. When asked who he would have voted for in the recent Egyptian parliamentary elections he responded that he is not in Egypt and does not know what is going on. As put to the applicant, however, events in Egypt, including the parliamentary elections, have been extensively reported on and information regarding the elections and the parliamentary candidates is readily accessible from Australia, which makes his evidence appear either evasive or disinterested in the current political climate in Egypt, and impresses the Tribunal as inconsistent with the "staunch" views he claimed to hold in his written submissions. He then offered that Ahmed Sahafi should rule, as he has a big brain, good ideologies and is the best person to preside over the airlines. He was unable to elaborate, however, on what those "ideologies" are. He then offered that if a MB member rules, they are religiously fanatical and it would be bad for the country. This directly contradicts his evidence to the department, put to him under section 424AA, that he would probably support the MB because the other parties do not treat people very well. Also contradicting that evidence, he offered the Tribunal that, if there was now a party like the NDP, he would support it. While he offered more detailed information regarding his claimed political views when he appeared before the Tribunal a second time, given the extensive and significant concerns set out in the balance of the Tribunal's findings and reasons, the Tribunal considers his more elaborate evidence on these matters, provided during his second appearance, to have been learnt and rehearsed to strengthen his claims. His evidence, in its entirety, did not demonstrate that he has any particular political understanding or opinions regarding the situation in Egypt, nor did it impress the Tribunal as consistent with his claims of having ever been a staunch or vocal supporter of Mubarak or the NDP, or to have ever spoken out against the army.

113. Adding further doubts to his claims of being a staunch and vocal supporter of the NDP or of having any political opinion against the Egyptian army which he has expressed in the past, or wishes to express in the future, his oral evidence to the Tribunal revealed only that, since arriving in Australia, his political activities have taken the form only of informal discussions with his housemates.
114. Compounding the above concerns, while informing the department that his parents and siblings do not have any political views and that his siblings are against politics, he then raised a new claim before the Tribunal, [in]March 2012, that his wife and children were “persecuted” by his family in Egypt around 2 or 3 weeks after the revolution. He offered almost immediately that he did not mention this to the department as he was psychologically unwell at the time, but provided no explanation as to why he was able to recall this information before the Tribunal. He used the words “persecuted” and “bashed” to describe his wife’s treatment by his family, but when pressed to explain what actually occurred he offered that there was a verbal altercation in which his father and the wives of his siblings asked his wife and children to leave their home (in which she was living) and to go and live with her own parents because of their opposition to the applicant’s NDP membership. His use of highly emotive and charged language, including the words “bashed” and “persecuted” to describe a situation which, when pressed, he described only as an oral altercation in which his family asked his wife and children to live with his wife’s parents, also raises concerns that the applicant is attempting to manipulate his expressed circumstances to fit the language and requirements of the definition of a refugee. These factors compound the Tribunal’s concerns regarding the truth and reliability of the applicant’s claims and evidence regarding his wife’s situation in Egypt and his claims and evidence more generally.
115. The applicant has provided documentary evidence of his membership to the NDP, and his oral evidence regarding the date on which he became a member is consistent with that described on the document provided. The Tribunal accepts that the applicant was a member of the NDP, but for the reasons detailed above, finds that his membership was motivated by the practical benefits the applicant felt he could secure, such as participating in free tours. On the evidence before it, and for the reasons set out above the Tribunal is not satisfied that the applicant was aware of or interested in the parties policies, or that he had a role within the party which gave or gives him any political profile in Egypt. The Tribunal does not accept that the applicant was or is a staunch or vocal supporter of the NDP, nor that he is currently. On the basis of: the applicant’s evidence given to the department, which was put to him under sections 424A and/or 424AA of the Act; the changes and contradictions in the applicant’s evidence regarding his own and his parents’/ siblings political opinions; his demonstrated disinterest and lack of awareness of the significant political events and players shaping Egypt currently, the Tribunal is not satisfied that the applicant or his family members in Egypt have any particular political views or opinions they have expressed in the past or wish to express in the future, nor that they are perceived to have such opinions.
116. The applicant and his representative have not provided any independent information supporting the applicant’s claim that ordinary former members of the NDP are or have been, since the fall of the Mubarak regime, the subject of adverse attention or treatment in Egypt. The Tribunal has looked for independent country information in connection with these claims but, as put to the applicant: was unable to find any information to suggest that former NDP members face any serious or significant harm simply by virtue of their former membership to the party; while reports indicate that many senior NDP members who were key figures of the former Mubarak regime have been arrested and face trial on a variety of charges related to

alleged corruption and abuses of power⁶, no reports could be found of general members of the NDP being targeted for arrest or other mistreatment simply as a result of their former party affiliation. Indeed, the sources consulted report that former NDP members have formed new political parties and/or joined other parties which ran in the recent parliamentary elections⁷ and that Mubarak-era Prime Minister Ahmed Shafiq was permitted to contest the recent Presidential elections which were lost only narrowly to MB candidate Mohammed Mursi.⁸

117. Based on all the evidence before it, the Tribunal is not satisfied that the applicant faces a real risk of significant harm or a real chance of persecution in Egypt from either the Egyptian authorities or population for reason of his past membership to the NDP. The Tribunal is not satisfied that the applicant: held or is perceived to have held any political role, profile or opinions which he voiced in the past; holds or has voiced, or is perceived to hold or to have voiced, any views against the Egyptian army's actions during or since the revolution in 2011 which give him any political profile exposing him to any real chance of serious harm or real risk or significant harm in Egypt; holds any political views he intends to voice in the future, which would give him a political profile giving rise to a real chance or real risk of adverse attention or treatment by the Egyptian authorities or population in the reasonably foreseeable future.

Claims regarding military service

118. The applicant claims that he fears being recalled for military service should he return to Egypt. While his written claims refer to his fear of being compelled to serve in the army again, as he was compelled in the past, his oral evidence to the Tribunal was that he willingly participated in 26 months of compulsory military service until [2001], and willingly served when recalled in 2004, 2005 and 2006. The Tribunal accepts that the applicant willingly participated in military service in the past. The applicant claimed however, that, since the fall of the Mubarak regime he is no longer willing to serve in the army. He referenced his reluctance to serve in terms given variously as: his political opinions regarding the army's actions during and since the revolution; he is known to have voiced opinions against the military when he was on the last ship he worked on; his brother was insulted, injured and later died in connection with his past army service; the ship which he deserted was managed by the army.
119. As reasoned above, the applicant's evidence regarding his political opinions impressed the Tribunal as vague, changing, inconsistent and unreliable. The Tribunal is not satisfied on the evidence before it that the applicant has any particular political opinions or profile in Egypt,

⁶ 'Egypt trials: Mubarak officials' charges and verdicts' 2011, *BBC News*, 28 September
<http://www.bbc.co.uk/news/world-middle-east-14389223> - Accessed 7 October 2011; Sharp, Jeremy 2011, *Egypt in Transition*, Congressional Research Service, 23 August, p.8
<http://www.fas.org/spg/crs/mideast/RL33003.pdf> - Accessed 12 September 2011; 'Egypt court acquits three Mubarak ministers' 2011, *Al Jazeera*, 5 July

<http://english.aljazeera.net/news/africa/2011/07/201175111239347361.html> - Accessed 7 October 2011
⁷ El-Din, Gamal Essam 2011, 'Return of the NDP: Mubarak-regime diehards retrench ahead of Egypt's parliamentary elections', *Ahram Online*, 18 September;
<http://english.ahram.org.eg/NewsContent/1/0/21542/Egypt/0/Return-of-the-NDP-Mubarakregime-diehards-retrench-.aspx> - Accessed 21 September 2011; 'Committee approves group set up by Mubarak party official' 2011, *Daily News Egypt*, 20 September; 'Guide to Egypt's Transition – National Democratic Party' (undated), Carnegie Endowment for International Peace,
<http://egyptelections.carnegieendowment.org/2011/09/22/national-democratic-party> - Accessed 6 October 2011;
<http://www.jadaliyya.com/pages/index/3163/meet-the-national-democratic-party-offshoots> accessed 6 July 2012;

⁸ <http://www.bbc.co.uk/news/world-africa-13315719>

or that he has voiced any political opinions in respect of the Egyptian army which would make him reluctant to serve a further army recall or expose him to a real chance of serious harm or a real risk of significant harm should he be recalled to serve. The Tribunal is not satisfied, on the evidence before it, that his ordinary membership to the NDP in the past would give rise to a real chance of serious harm or a real risk of significant harm should he be recalled to serve in the army. In relation to his brother [Mr B], his oral evidence to the Tribunal was that this brother [injury details deleted: s.431(2)] from which he died some six years later in around 2004. The applicant's evidence suggests that the army failed to properly diagnose [Mr B]'s medical situation at the time he was injured and that this may have contributed to his death in 2004. However, on his own evidence the applicant willingly served in the army when recalled in 2004, 2005, 2006. On the basis of this evidence, the Tribunal does not accept that the circumstances of the applicant's brother's death has any bearing on the applicant's willingness to serve in the Egyptian military if recalled. In relation to his claims to be reluctant to serve in the military again because he jumped ship from an army managed ship, for the reasons set out under "claims regarding jumping ship" below, the claims made and evidence advanced reveal only a concern regarding the applicant's liability to face civil sanctions regarding a breach of his employment contract with the shipping company he worked for. As reasoned below, the Tribunal does not consider this to reveal any Convention nexus, nor does it satisfy the Tribunal that the applicant would face a real chance of serious harm or a real risk of significant harm should he return to Egypt or be recalled to military service.

120. On the basis of the evidence before it, including the concerns identified above regarding the reasons provided by the applicant for his claimed reluctance to serve in the army, and his demonstrated willingness to serve in the past, the Tribunal is not satisfied that the applicant is in fact unwilling to serve in the army should he be recalled.
121. Further, on his representative's written submissions, the applicant's military service recall obligations cease 11 years after completing his first full term of service (which on the applicant's own evidence was completed on [2001]). On that view the applicant would appear to not be at any risk of being recalled after [2012]. As put to the applicant, however, independent information before the Tribunal indicates that Egyptian men can only be recalled for a period of 9 years from the time they complete their initial period of service, which in the applicant's case would have ceased in [2010].⁹ The Tribunal also considers it relevant that, on the applicant's own oral evidence he has not been recalled to military service since 2008, around 4 years ago. Based on this, together with the extensive concerns detailed above regarding the truth and reliability of the applicant's claims and evidence, the Tribunal prefers the independent information before it to the effect that the applicant's exposure to being recalled to military service would have ceased 9 years after he completed his initial term of service and that he has not been at risk of being recalled to the Egyptian army since [2010].
122. Based in the above evidence cumulatively, the Tribunal is not satisfied that the applicant faces a real chance or real risk of being recalled to military service in Egypt the reasonably foreseeable future.

Claims regarding jumping ship

123. On his own evidence, the penalties that the applicant fears for jumping ship to remain in Australia are based on a breach of contract between him and the shipping company which has

⁹ CIA World Factbook at <https://www.cia.gov/library/publications/the-world-factbook/fields/2024.html>, accessed 6 July 2012

paid for his airline tickets and other expenses. On his own evidence, if he cannot pay back all the expenses he will have to face prison time for violating the contract conditions.

124. This accords with independent information contained in a fairly dated DFAT cable (from 19 August 1996) relating to the Egyptian government's approach to ship jumpers, which, as put to the applicant, states:

According to sources in State Security and sources in the legal profession, ship jumping from a government line is not a crime and someone who jumped ship at a foreign port would not be prosecuted under Egyptian criminal law. According to State Security, however, some "administrative penalties" might be incurred (arising we presume from contractual obligations with the shipping company), from losing one's job, payment of a fine imposed by the shipping line, or subjection to a civil suit for recovery of losses incurred to the shipping line as a result of the act of jumping ship. Our sources thought that the shipping line would be unlikely to pursue the latter course of action.

We are unable to ascertain the precise involvement of State Security in ship jumping cases, but given that it is not a crime, we were given the impression that State Security would have little interest in pursuing ship jumpers for that act. It is possible that the shipping line might inform State Security of the incident but we are not able to ascertain what action State Security would then take.¹⁰

125. When this information was put to him the applicant offered that his only options are to pay back the expenses or go to jail. When asked how much the expenses he has to pay back would be, he responded that he does not know, but that they could include the cost of an a return airline ticket and he has no money to pay these fines and support his wife. However, the applicant's evidence to the effect that he would face serious or significant harm for jumping ship impressed the Tribunal as entirely speculative in terms of how much he would be required to pay back, and on the evidence provided the applicant himself is not even satisfied of how much, if anything, he would be required to pay back. Based on the evidence before it the Tribunal is not satisfied that the applicant would be unable to repay the contractual debts he owes to his employer for ship jumping. Further, on his own evidence, he would face jail only if he does not repay his debts. However, the Tribunal does not consider the enforcement of an employment contract, or the consequence of facing jail time for breach of the terms of his contract and failing to repay money owed by him under that contract, to amount to: significant harm as anticipated by section 36(2A) of the Act; or persecution involving serious harm as anticipated by sections 91R(1)(b) or 91R(2) of the Act. The Tribunal also finds the enforcement of his employment contract and the penalties the applicant claims to fear to be entirely for reason of his breach of contract, and is not satisfied on the evidence before it that the contract would be enforced or penalties would be imposed in a discriminatory manner in respect of the applicant for any Convention reason.
126. On the basis of all the evidence before it, including cumulatively, and bearing in mind the cumulative and extensive concerns identified above, the Tribunal is not satisfied that the applicant faces a real chance of persecution involving serious harm for a Convention reason should he return to Egypt. Accordingly, the Tribunal is not satisfied on the evidence before it that the applicant has a well-founded fear of persecution in Egypt within the meaning of the Convention.
127. The Tribunal has also considered whether the applicant meets the complementary protection criterion. For the reasons given above the Tribunal does not have substantial grounds for

¹⁰ Country Information Service, 1996, Country Information Report No. 737/96 - Egypt: ship jumpers, RRT Information Request EGY21095, (sourced from DFAT 19 August 1996)

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 will suffer significant harm: s.36(2)(aa)

CONCLUSIONS

128. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
129. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under s.36(2)(aa).
130. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

DECISION

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