



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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EGYPT

IAA reference: IAA19/07346

Date and time of decision: 18 November 2019 09:54:00

S MacKenzie, Reviewer

**Decision**

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The IAA affirms the decision not to grant the referred applicant a protection visa.

*Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.*

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a citizen of Egypt. He arrived in Australia [in] June 2013 as an unauthorised maritime arrival. On 21 September 2017 the applicant lodged a valid application for a Class XE Subclass 790 Safe Haven Enterprise visa (SHEV).
2. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 16 October 2019, on the basis that the applicant did not face a real chance of serious harm or a real risk of significant harm upon return to Egypt.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). No further information has been obtained or received.

### Applicant's claims for protection

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4. The applicant's claims can be summarised as follows:
  - The applicant is a citizen of Egypt;
  - In the early 1990s, he was detained and harmed by the Egyptian authorities in connection with his participation in a student pro-democracy demonstration;
  - Following this incident, he was unable to obtain/hold employment due to interference by the state;
  - He resided in Lebanon between 1993 and 2013;
  - If returned to Egypt, he fears he will be harmed or killed due to his past experience with the regime.

### Refugee assessment

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5. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

### Well-founded fear of persecution

6. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
  - the person fears persecution and there is a real chance that the person would be persecuted
  - the real chance of persecution relates to all areas of the receiving country

- the persecution involves serious harm and systematic and discriminatory conduct
- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
- the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

*Identity / Receiving country*

7. Although he lived primarily in Lebanon between 1993 and 2013 and is married to a Lebanese national, since his arrival in Australia, the applicant has consistently claimed to be a citizen of Egypt with no current legal right to enter or reside in Lebanon.
8. According to a transcript of his interview with the Department on 19 June 2013 (arrival interview part one), the applicant stated he was a citizen of Egypt and that his wife was born in, and a national of, Lebanon.
9. In a subsequent interview on 4 July 2013 (arrival interview part two), the applicant advised the interviewing officer that while he did not hold Lebanese citizenship, he lived lawfully in the country due to his marriage to a Lebanese national. He also advised that he departed Lebanon using his Egyptian passport.
10. In his SHEV application, the applicant declared that he and his children were all nationals of Egypt. However, I note in a different part of the form he recorded that his children were citizens of Lebanon. He also declared that he did not have the right to enter or reside in another country. He recorded that he had never renounced citizenship of any country.
11. In his statutory declaration, dated 18 September 2017, that formed part of the SHEV application (SHEV statement), the applicant stated he was a citizen of Egypt and not a citizen of Lebanon. He stated that when he first entered Lebanon he did so illegally. He also stated that he cannot return to Lebanon because he no longer held a valid residence card and that his wife was not willing to support him to obtain a residence card because their relationship had ended.
12. In his interview with the delegate on 24 July 2019 (SHEV interview), the applicant reiterated his previous evidence, stating that:
  - He continues to be a citizen of Egypt and that he is not a citizen of any other country;
  - He does not have a visa or permission to live in another country, including Lebanon;
  - The last visa he held in Lebanon expired over four years ago;
  - He and his wife are separated, and his wife has indicated she is considering divorce;
  - His children are citizens of Egypt and not yet citizens of Lebanon;
  - He departed Lebanon using his Egyptian passport;
  - He has never renounced his Egyptian citizenship.

13. In a written submission dated 17 August 2019 (post-SHEV interview submission), the applicant's former representative confirmed that the applicant is a citizen of Egypt, that he has no access or residence for any other country, and that he remains separated from his wife.
14. In 2018, Human Rights Watch (HRW) reported that current law in Lebanon discriminates against women married to foreigners, their children, and spouses, by denying citizenship to the children and spouses. On 6 August 2018, the Progressive Socialist Party announced a proposal to amend the nationality law to allow Lebanese women to pass on their citizenship to their children and non-Lebanese spouses on an equal basis with Lebanese men, but no action has been taken since. HRW also reported that non-citizen children and spouses must reapply for legal residency in Lebanon every one to three years.<sup>1</sup>
15. Having had regard to all of the information, I accept, as did the delegate, that the applicant is a national of Egypt and that presently, he does not have the right to enter or reside in any other country, including Lebanon. I find Egypt to be the receiving country for the purpose of this decision.

#### *Claims against Lebanon*

16. Through the SHEV application process, the applicant stated that he feared returning to both Egypt and Lebanon. In respect of Lebanon, he claimed that he had [a sum of money] withheld from him in connection with a [job] he completed. The matter ultimately ended up in the court system for over 10 years and while he was able to recoup a small amount he had no choice but to give up. Later, in 2012, the applicant was a witness to theft of some [items] and was summonsed to testify. After this, he was detained because his residency had expired. He was physically mistreated. Further, the person he testified against was imprisoned and threatened to kill the applicant for testifying against him. The applicant relocated to different areas but his location was discovered. In the post-SHEV interview submission, the applicant's former representative confirmed that the applicant feared returning to Lebanon due to the threat he faced before he left.
17. Having had regard to the circumstances of this case, I find it unnecessary to consider the applicant's claims as to why he cannot return to Lebanon. As noted above, the applicant does not have the right to enter or reside in Lebanon and I have found his receiving country to be Egypt. Further, there is no claim or evidence before me to indicate that the claimed events in Lebanon, or the reasons why he fears returning there, have any bearing on whether the applicant faces a real chance of serious harm or a real risk of significant harm upon return to Egypt. I have considered below the applicant's claims as to why he cannot return to Egypt and consider the claimed events in Lebanon do not assist in my assessment on whether he faces a real chance or risk of any future harm in that country. For that reason, I have not considered the applicant's claims against Lebanon.

#### *Events in Egypt*

18. In his SHEV statement, under the heading 'Background information', the applicant stated that following the death of his father, in around 1985, his [uncle] tried to take over his father's role. The uncle was hard on the family and would beat them when they refused to work for him. On one occasion, the applicant slapped his uncle back. His uncle threatened him and demanded obedience. The uncle also used to make fun of the applicant's name and even

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<sup>1</sup> Human Rights Watch (HRW), "Lebanon: Discriminatory Nationality Law", 3 October 2018, 20190503101152

other kids would copy him and tease the applicant. As a result of these issues, the applicant suffered psychological issues through all stages of his life. In support of his SHEV application, the applicant provided a letter, dated [September] 2017, from a counsellor who stated the applicant had been attending therapy sessions for management of his psychological health conditions. While the counsellor refers to certain 'traumatic experiences' in Lebanon and Egypt as reported by the applicant, she makes no mention of his childhood experiences. In any case, I accept the applicant's consistent evidence that his father passed away in 1985 and, on the evidence before me, I am prepared to accept his childhood experiences in Egypt are as claimed.

19. In his SHEV statement, the applicant claimed that in his last year of university he participated in a student union demonstration in support for a democratic government. The union wanted an improvement in living conditions and to create jobs for the younger generation. As a result of his participation in the demonstration, the applicant claimed he was taken by security and tortured for [numerous] days. He suffered [injuries] to his [leg]. Following this, he found it difficult to find work which he attributed to the police and his past. He could only hold a job for a few days before he was asked to move on. This happened multiple times. Because he was without work, the only solution was to leave the country.
20. On his SHEV application form, the applicant recorded that he completed his university course in May 1992. In various parts of the application form he recorded that he had lived in Lebanon since January 2012, March 1993, and May 1993. He recorded no employment history in Egypt.
21. In the SHEV interview, the applicant mentioned up front that he was suffering from memory loss. In respect of events in Egypt, he stated that when they were arrested by the authorities he and his friends were belittled, beaten and electrocuted. His friends were raped. The applicant showed the delegate [an injury on his leg from a certain incident]. He indicated that he was released without any formal charges. The applicant said he had no involvement in organising the demonstration and that he does not know what happened to his friends following this incident. He felt that after his release he was being spied on and that the authorities were somehow impacting his ability to hold a job.
22. When asked if he had been involved with a political group in Egypt, Lebanon, or since being in Australia, the applicant advised the delegate that he had not. When asked if he had been politically active in Australia, the applicant said only on [social media] where he likes to comment and share his opinion. When asked why he would be a person of adverse interest to the Egyptian authorities nearly 30 years following the incident in the early 1990s, the applicant advised the delegate that the current regime was one million times worse and that if anyone opens their mouth they will be harmed or killed. He referred to his activity on [social media] and said that the Egyptian government have spies who know who is and who is not supporting the government. He also said that while there is no proof that he had been previously detained and tortured, it is a government secret so they will be aware. He is 99 percent sure that, if returned to Egypt, the authorities will apprehend him at the airport due to his past.
23. Towards the end of the SHEV interview, the delegate raised a number of concerns with the applicant. In particular, that his evidence in arrival interview as to why he left Egypt and why he could not return there was different to what he was now claiming, and that it might lead the delegate to question the credibility of those claims. Specifically, the delegate pointed to the following information earlier provided:

- That every young person wanted to leave Egypt for employment purposes;
  - That he could not return to Egypt because he had married against his mother's wishes;
  - That could not return to Egypt because he had problems with his siblings.
24. The delegate also highlighted to the applicant that he had given no indication in the arrival interview that he feared harm from the Egyptian authorities or that he had been asked to leave his employment.
25. In response to the adverse information put to him, the applicant advised the delegate that everything he had said in the arrival interview was true, but that he didn't mention the other events in Egypt because telling that story gives him nightmares and angers him. He tries not to talk about it.
26. In her letter dated 27 September 2017, the applicant's counsellor provides the following information about events in Egypt:

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*[The applicant] informed that he finished his [degree] in Egypt and was happy to start his employment journey. However his dream turned to what he named the most terrible time of his life. He stated that once he was arguing about the social justice with [h]is colleges [sic], a few of them were became very angry on [sic] him and tried to slap and push him. He informed that a few days later he has been threatened to leave the place, he exposed [sic] to all kinds of torture from the authorities.*

...

27. In the post-SHEV interview submission, the applicant's former representative draws attention to the applicant's mental health condition, as outlined in the counsellor's letter, and suggests this may have affected his ability to participate in the SHEV interview. It was also submitted the applicant's [injury] and the counsellor's letter could be considered evidence that he was recalling the truth about past events.
28. In her letter, the counsellor stated that the applicant had reported to her that he was experiencing symptoms such as low motivation, sleeping difficulties and depressed mood as well as feeling detached from his wife and children. She stated that he also informed her that he was experiencing flashbacks, intrusive distressful thoughts in relation to his traumatic experiences in Egypt and Lebanon. The counsellor stated that the applicant 'was diagnosed with depression and mental disorder', which I infer is information the counsellor has obtained from the applicant's treating doctor at the time. She also stated that it was 'her professional opinion that [Mr A] also was suffering a PTSD'. It is not clear whether the reference to '[Mr A]' relates to the applicant or another person. While the applicant has presented documents recording a number of different variations to his name to the Department, [Mr A] is not one of those names and bears no resemblance to the other names provided.
29. The former representative also raised concerns in the post-SHEV interview submission about the conduct and competency of the interpreter in the SHEV interview. She stated that the interpreter asked the applicant questions not asked by the delegate, for example, in connection with his experiences on Nauru. The former representative also stated that the

interpreter laughed when both she and the applicant corrected an interpreting error at the start of the interview. She further stated that the interpreter had omitted certain words the applicant had said, such as “I think” when he was expressing uncertainty. It was further submitted that the interpreter was unable to find the correct words to interpret what the applicant had said, and on occasion had asked the applicant how to say certain words. Although the former representative offers little in the way of corrections or examples of the purported interpreting issues, she offered the following information to ensure the applicant’s claims were correctly captured:

...

*In regards to why [the applicant] believes that he may still be a case to the current government even after 30 years, [he] stated that because he opposes this government's vision and he believes that a person like him would be taken away and prosecuted for his beliefs which is the case of too many people who were recently killed in the Egyptian prisons after been tortured.*

...

30. As to why the applicant’s later evidence differed from the arrival interview, the former representative asked the delegate to consider:

- The applicant’s evidence in the SHEV interview that his statements provided at the arrival interview were true;
- That the applicant is a boat arrival who suffered significant harm and faced torture on Nauru;
- The applicant had not been provided any legal advice about his case;
- Severe emotional breakdown had stopped the applicant from talking about his suffering;
- He was not aware of the importance of raising certain facts earlier.

31. As noted by the delegate, the applicant (including via his former representative) did not provide any country information to corroborate the student demonstrations for democratic reform in the early 1990s, and nor was the delegate able to find any country information to support this claimed event. The delegate had before him reporting from HRW that indicated that in 1991 university students had been targeted for arrest and detention following public expression of anti-war views.<sup>2</sup> Although the report makes no specific reference of university students being involved in democracy related protests or demonstrations, I note there was a push by opposition political parties in 1991 for “genuine democracy” proposing respect for human rights and civil liberties, press and publication freedom, freedom to form political parties, restrictions on the application of the emergency law, and judicial supervision of elections,<sup>3</sup> thereby indicating that calls for democratic reforms were on the political agenda at the relevant time. Although in relation to the anti-war protests, the report also indicates

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<sup>2</sup> HRW, “Human Rights Watch World Report 1992 – Egypt”, 31 December 1991, 20191011122109

<sup>3</sup> Ibid.

that the government said it would take strong and firm action against university students causing unrest.<sup>4</sup>

32. Overall, I consider aspects of the applicant's evidence as to why he departed Egypt problematic. In particular, I find his claimed involvement in a student demonstration difficult to reconcile with what he purportedly told his counsellor at around the same time he lodged his SHEV application. Specifically, he appeared to not mention it to her. I also consider his failure to indicate in the arrival interview, even in general terms, that held anti-regime views in the past or that he faced problems with the authorities not insignificant. However, despite my concerns, I am willing to give the applicant the benefit of the doubt and accept that he came to the adverse attention of the Egyptian authorities in the early 1990s. In coming to this conclusion, I give weight to his testimony in the SHEV interview about the mistreatment he faced following his arrest with other students, which indicated to me he was recalling a personal experience. As noted by the delegate, the applicant was quite candid and emotional when discussing the treatment he faced. I also give weight to the country information which indicates that calls for democratic reforms were on the political agenda at the relevant time, and that the security services took a hard-line approach to student activism. I also note that the applicant appeared to show the delegate [an injury] on his [leg] during the SHEV interview as evidence of [a certain incident]. I accept, given the circumstances of this case, that the applicant may not have felt comfortable to reveal at the arrival interview his interactions with the Egyptian authorities in the early 1990s. For these reasons, I accept the applicant was arrested for participating in a student demonstration. I also accept he was mistreated as claimed, before being released without any formal charges.
33. The applicant's evidence as to whether he stayed or worked in Egypt before departing Lebanon was problematic. On his SHEV application form, he indicated that he remained in Lebanon for up to 12 months following completion of his university studies and that he first worked in Lebanon. However, in his SHEV statement, the applicant claimed to have had multiple jobs in Egypt that he was not able to hold due to interference from the state. His evidence in part one and part two of the arrival interview was that he left Egypt because there was no employment and that it was something that all young people did and that he departed for Lebanon straight after he completed his studies. According to his counsellor's letter, he appeared to tell her in 2017 that he worked in Egypt and specifically told her of some difficulties he experienced with colleagues. On the evidence before me, while I am prepared to accept the applicant may have worked in Egypt following his studies, I am not satisfied that it was impacted by the state due to his involvement in the student demonstration, or that he was being spied on by the authorities. In coming to this conclusion, I have considered the applicant's evidence in respect of his employment which overall I found unconvincing. Further, I have considered his oral evidence in the SHEV interview that he was being spied on and prevented from holding a job due to state interference vague and speculative. In considering this aspect of the applicant's claims, I have had regard to the various reasons put forward as to why there may be problems with his evidence, including in connection with his claimed memory and health issues, and the purported interpreter issues in the SHEV interview. However, I am not persuaded by those explanations in connection with this matter. Having regard to the evidence, I prefer the applicant's evidence in the arrival interview that he left Egypt in the 1990s to pursue employment opportunities in Lebanon. I am not satisfied he was denied or prevented from engaging in employment in Egypt due to having an adverse profile with the Egyptian authorities.

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<sup>4</sup> Ibid.



34. In the SHEV interview, the applicant claimed that he briefly returned to Egypt in 2010 or 2012, he could not recall when. He stated that he initially went to the Egyptian embassy in Lebanon to obtain his [child's] birth certificate but was told he had to go to Egypt. Later, he stated that he returned to Egypt "once or twice to renew the birth certificates for the kids". He also said he attempted to renew his own passport, but faced difficulties because he had not completed his compulsory military service and had to return to Egypt to face a military court and pay a fine. The applicant claimed that he was only able to return safely because he had a powerful uncle who facilitated his entry and exit from the country. He also claimed that on return he did not stay in his home village, but that he lived in hiding in accommodation arranged by his [siblings] and that only his [siblings] knew where he was. While there, he obtained the birth certificate and paid the fine, although his [sibling] did all the paperwork. He was later able to renew his passport at the Egyptian embassy. The applicant also confirmed to the delegate that his identity card was renewed in [2010].
35. I note the applicant's evidence in the arrival interview was that he returned to Egypt in 2010 and I accept this to be the case. I also accept he may have returned to Egypt more than once as he indicated in the SHEV interview. However, I do not accept the circumstances in which he returned are as claimed. In particular, I find it difficult to reconcile his claim that he returned undetected and lived in hiding with the assistance of his uncle and [siblings], yet he also claimed that his [sibling] handled all the paperwork to obtain the birth certificate and resolve the issue with the military court and fine – thereby indicating that there was no reason for him to return to Egypt in the first instance. I also consider that given his claimed adverse profile in Egypt that he would have tried to resolve these issues from Lebanon, which if I was to accept his claimed version of events, it appears he would have been able to do. I further consider the applicant's claim to have been assisted by his siblings in 2010 problematic given his evidence in the arrival interview (later confirmed as true in the SHEV interview and post-SHEV interview submission) that he could not return to Egypt because he had problems with his siblings. Moreover, I consider that the applicant was able to get his passport renewed by the Egyptian embassy not supportive of his claim to have an adverse profile with the Egyptian government. On the evidence before me, I am not satisfied the applicant returned to Egypt in 2010 undetected or with the assistance of a powerful uncle, or that he was a person of adverse interest to the Egyptian authorities in 2010. I am also not satisfied that he entered and exited the country in any other way other than as a normal passenger. Further, I am not satisfied that he lived in hiding during his return to Egypt in 2010 and nor am I satisfied his issues were resolved with the military court without him being present. I do not accept the obtaining of the birth certificate, the payment of the fine, or the renewal of the identity card was done by any other person other than the applicant himself. I am not satisfied the applicant's return to Egypt in 2010 went undetected by the state. In coming to this conclusion, I have had regard to the various reasons put forward as to why there may be problems with the applicant's evidence, including in connection with his claimed memory and health issues, and the purported interpreter issues in the SHEV interview. However, I am not persuaded by those explanations in connection with these matters.
36. As noted above, the applicant claimed in the arrival interview that he could not return to Egypt because he had problems with his siblings. He indicated the issue was that he did not respect his mother's wish for him to marry his cousin and his siblings had an issue with this. The claim was not advanced in his SHEV statement and it only came up in the SHEV interview when the delegate raised concerns about the credibility of his claims. In response to those concerns, without specific reference to that claim, the applicant advised the delegate that everything he had said in the arrival interview was true. This was reiterated in the post-SHEV interview submission. However, his oral evidence in the SHEV interview indicated that he maintained

an ongoing relationship with his siblings with no suggestion that he feared harm from them. He indicated that he had contact with them during his return to Egypt in 2010. In respect of his current relationship with his mother, I note he advised the delegate that he occasionally sent her money. While I am prepared to accept the applicant's siblings were disappointed with the applicant for not respecting the wishes of their mother, there is no credible evidence before me to indicate that the applicant faces harm in Egypt for this reason, and I am not satisfied he faces a real chance of harm on this basis.

37. I accept that the applicant was teased and beaten by a [uncle] as a child as detailed in his SHEV statement. However, there is no claim or evidence before me that the applicant fears returning to Egypt in connection with these events which occurred prior to his move to Lebanon in 1993. The applicant has not claimed to have had any difficulty with this uncle now for approximately 30 years and I consider it remote that he would face a real chance of harm from this person now, or in the foreseeable future, if returned to Egypt.
38. I accept the applicant was arrested and mistreated in connection with his participation in a student demonstration in the early 1990s. The applicant stated in his SHEV statement that he cannot return to Egypt due to his past experience with the regime. However, when I consider the passage of time and the fact that the applicant was able to return to Egypt in 2010 and interact with the Egyptian authorities (including in Lebanon via the embassy) without any apparent difficulty arising from events nearly 30 years earlier, I find it difficult to accept he would now face a real chance of harm on this basis. I also give weight to the applicant's evidence in the SHEV interview that nobody in his family has faced any difficulty in Egypt in connection with past events involving him and that his mother continues to receive a government pension in connection with the applicant's late father who was employment by the state. I also accept the applicant's evidence in the SHEV interview that he has not been politically active in Lebanon or in Australia. While he indicated in the SHEV interview that he had expressed political views on social media ([social media]), as noted by the delegate, he provided no evidence of this and I am not satisfied he has expressed views that are critical of the regime that, if known, would lead him to face a real chance of harm. There is no credible evidence before me to indicate that any views expressed on [social media] are critical of the Egyptian government, that the views have been shared publically to the extent that the government, or any other person or group who the applicant claims to fear, is aware of those views. On the information before me, I am not satisfied the Egyptian authorities are aware of the applicant's [social media] profile. While I accept the applicant's evidence in the SHEV interview that he is against the "system" and "military" in Egypt, he has not claimed that he would seek to proactively or openly channel any anti-regime sentiments upon return to Egypt, and nor am I satisfied that he would do so. I give weight to the applicant's evidence that aside from his participation in the student demonstration in the early 1990s he has not sought to be politically active since he departed Egypt in 1993. On the evidence before me, I am not satisfied the applicant faces a real chance of harm in connection with his actual or imputed political opinion either in connection with his involvement in a demonstration in the early 1990s, his subsequent arrest and mistreatment at that time, or his activity on [social media] now, or in the foreseeable future. I am not satisfied the applicant is a person with an adverse profile with the Egyptian authorities, or his family in Egypt, in connection with past events. Nor am I satisfied that the applicant will engage in an activity on return to Egypt now, or in the foreseeable future, that would lead him to face a real chance of harm.
39. I accept the applicant was referred for counselling by his general practitioner in 2017. In her letter, the counsellor stated the applicant reported to her an inability to cope with his situation of constant stress and worries about his uncertain future as well as detachment from his children. The counsellor stated that she encouraged the applicant to develop some

coping strategies to manage his symptoms and improve mood. There is not claim or evidence before me to indicate the applicant is continuing with counselling (or any other form of treatment) and nor has he claimed that he will face any harm in Egypt in connection with his mental health. I accept that on return to Egypt the applicant would continue to be separated from his children who reside in Lebanon and he would find this continued separation distressing. However, I note the applicant would continue to be separated from his children whether he returned to Egypt or remained Australia. I am also mindful that the applicant's children are citizens of Egypt and on that basis have the ability to enter and reside in Egypt to visit or live with their father. On the evidence before me, I am not satisfied the applicant faces a real chance of harm in Egypt in connection with his continued separation from his children or his mental health.

40. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

#### **Refugee: conclusion**

41. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

#### **Complementary protection assessment**

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42. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

#### **Real risk of significant harm**

43. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
  - the death penalty will be carried out on the person
  - the person will be subjected to torture
  - the person will be subjected to cruel or inhuman treatment or punishment, or
  - the person will be subjected to degrading treatment or punishment.
44. I have found that the applicant does not face a real chance of any harm in Egypt for the reasons claimed. Based on the same information, and for the reasons set out above, I find he does not have a real risk of suffering significant harm in Egypt.
45. After having regard to the applicant's circumstances, I find that he does not face a real risk of suffering significant harm.

**Complementary protection: conclusion**

46. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

**Decision**

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The IAA affirms the decision not to grant the referred applicant a protection visa.

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

...

***bogus document***, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

***cruel or inhuman treatment or punishment*** means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

***degrading treatment or punishment*** means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

***receiving country***, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

***torture*** means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

#### **5H Meaning of refugee**

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

### 5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
  - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
  - (b) conceal an innate or immutable characteristic of the person; or
  - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
    - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
    - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
    - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
    - (iv) conceal a physical, psychological or intellectual disability;
    - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
    - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
  - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
  - (b) the persecution must involve serious harm to the person; and
  - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
  - (a) a threat to the person's life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person's capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

### 5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
  - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

#### **5L Membership of a particular social group other than family**

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
  - (i) the characteristic is an innate or immutable characteristic;
  - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
  - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

#### **5LA Effective protection measures**

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
  - (a) protection against persecution could be provided to the person by:
    - (i) the relevant State; or
    - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
  - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
  - (a) the person can access the protection; and
  - (b) the protection is durable; and
  - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

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#### **36 Protection visas – criteria provided for by this Act**

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- (2) A criterion for a protection visa is that the applicant for the visa is:
  - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
  - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
  - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (a); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant; or
  - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (aa); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
  - (a) the non-citizen will be arbitrarily deprived of his or her life; or
  - (b) the death penalty will be carried out on the non-citizen; or
  - (c) the non-citizen will be subjected to torture; or
  - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
  - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
  - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
  - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

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*Protection obligations*

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
  - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

*Determining nationality*

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.