



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

EGYPT

IAA reference: IAA17/03478

Date and time of decision: 7 November 2017 10:27:00

Rosie Mathlin, Reviewer

Decision

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

Visa application

1. The referred applicant (the applicant) claims to be an Egyptian male in his early twenties. He arrived in Australia by boat, undocumented, [in] 2013. [In] 2016 he lodged an application for a temporary protection visa (TPV application) which was refused by a delegate of the Minister for Immigration and Border Protection (the delegate) [in] 2017.
2. The applicant claims that he fears harm on return to Egypt for two reasons - from the Muslim Brotherhood (MB); and because he is eligible for compulsory military service.

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.

Refugee assessment

4. 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.

Identity and nationality

5. The applicant has presented documents to support his claims as to his identity and nationality. On the basis of his uncontradicted evidence I am satisfied that his identity is as claimed and that he is a national of Egypt and of no other country, and that he has no right to enter and reside in any other country. Egypt is the receiving country for the purposes of the Act.

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.

Harm from MB

7. At the entry interview [in] 2013 when the applicant was first asked to provide reasons why he should not be returned to Egypt, the main reason he gave was that there was no peace or security, the MB was active in his area and they wanted him to join them and grow a long beard. The MB would approach him and his friends when they were [in a shop]. He mentioned an incident one year earlier when he was [driving] and his [vehicle] was taken.
8. The applicant did not repeat his claims to fear harm from the MB in his TPV application. However at the TPV interview he said that his area was dominated by MB who try to force you to join. When asked whether he had been pressured to join the MB, he did not answer directly but said that they beat him once when he was [younger]; he was with mates in the street and the MB started beating them. Asked whether the MB was trying to recruit him at the time, again he did not respond directly, but said that he fainted. He said that there were no other occasions when he was mistreated by the MB.
9. Based on the information provided by the applicant I am not satisfied that he has ever experienced serious harm from the MB. He did not identify the MB as being responsible for the theft of his [vehicle], and I am not satisfied that, if this incident did occur, it was anything other than an ordinary crime. The applicant's own evidence and country information indicates that there was poor security and a general break down in law and order at that time.¹ His claim to have been beaten by the MB when he was in the street with friends was not raised at the entry interview in the context of his claim to fear harm from that organisation, or in his TPV application, where he made no mention at all of any fear of harm from the MB. These omissions lead me to doubt the credibility of the claim. When asked specifically at the TPV interview whether the MB had tried to recruit him he twice avoided directly answering the question. Again, even if I were to accept that the applicant had been beaten in the street in about 2011 when he was [younger], I am not satisfied that he was beaten by the MB or that this was anything other than a criminal incident or street brawl.
10. Following the ouster of the Mubarak regime in January 2011, which was followed by a breakdown in public order and security, the MB was elected to power in June 2012. Against this background, it is broadly plausible that the applicant may have had concerns about the influence of the MB. Since then, however, the MB government has been removed and since 2013 the MB membership has been subject to large scale arrests, detention, surveillance and monitoring.² In these circumstances, I am satisfied that the applicant does not face a real chance of harm from the MB, either because he does not want to join them or because he does not share its ideology, if he returns to Egypt now or in the reasonably foreseeable future. Accepting that the applicant may have been involved in up to two criminal incidents, I am not satisfied that these were anything other than random and opportunistic crimes and I am not satisfied that they demonstrate the existence of a real chance that the applicant would face similar harm now or in the reasonably foreseeable future.

Military service obligations

11. The applicant claims that he became eligible to do compulsory military service when he turned eighteen (in [date]). He has consistently claimed that he expected the letter informing him of his obligations in [a certain month].

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Egypt", 19 May 2017, CISED50AD4203 at 3.20

² Ibid 3.39 – 3.44

12. The applicant has stated that he departed Egypt legally using his own passport which was issued “[a number of months]” before he left; on two occasions during the TPV interview he appeared to confirm that the passport was issued after he had turned eighteen. He said that it stated that he was not permitted to leave Egypt [after a certain date in] 2013. When questioned about how he could have been issued with a passport once he had turned [age], he said that people are taken in groups, and his group was due to start in [that date in] 2013.
13. The delegate discussed with the applicant country information which states that men who are eligible for their military service are not permitted to leave the country unless they have deferred their military service or are exempt.³ In response, the applicant reiterated that he was not formally eligible until [a date in] 2013; when the delegate indicated that he did not accept, on the basis of the country information, that the applicant would have been permitted to leave once he had turned eighteen, the applicant said “they want to conscript you when you finish school – they wouldn’t conscript me until I finish school”.
14. I note that the applicant has provided inconsistent information about when he finished school. At the entry interview he provided very clear information that he completed [his studies at] secondary school at [a school] in 2009 and thereafter worked for three years until his departure. In his TPV he stated that he had attended another school for a further [period of study], from 2009 until 2012; and he provided no details about any employment in Egypt.
15. I prefer the information provided by the applicant in the entry interview about his educational and employment history. There, he explicitly stated that he attended [a school] for three years, finishing in 2009; he said that “this was the last school”. He also provided specific details of his employment from 2009 until 2012. In these circumstances, I am satisfied that the applicant finished his school education in 2009 and that thereafter he worked. I do not accept that his eligibility for compulsory military service was delayed past his eighteenth [birthday] because he was still studying. (I note in any case, that even in his TPV application he states that he finished school [at an earlier time]).
16. Based on the country information, the delegate did not accept that the applicant would have been permitted to leave Egypt legally, using his own passport, if he really had outstanding military service obligations, and he did not accept that the applicant had left Egypt to avoid military service obligations.
17. The country information considered by the delegate which states that men who are eligible to perform military service are not allowed to leave the country appears to be unequivocal.
18. I have further reason to doubt the applicant’s claims about his reasons for leaving. First, as noted above, he provided inconsistent information about his education and employment in his entry interview and his TPV application and I consider it likely that he did so in order to support his story about his eligibility for military service having been delayed while he completed his education. The applicant has provided inconsistent evidence about what happened to his passport - at the entry interview he said that the smugglers took it, while in his TPV application and at the TPV interview he said that it had been stolen or taken by [police] following an unsuccessful attempt to depart from [Country 1] by boat. When asked to explain the two different versions, he said that when the entry interview took place he had “just left the ocean”, he was confused and anxious and he was not in a position to understand what was happening; he said that other people had told him to say that the smuggler took the passport. As pointed out to him by the delegate, in fact the entry interview took place two months after

³ Ibid 3.85

he arrived in Australia. While I accept that people may be swayed by the advice of others as to what to tell the Department of Immigration and Border Protection about their circumstances, I consider that the applicant has demonstrated that he is willing to provide false information to the Department if he thinks that it will assist him.

19. I am also concerned by differences in the reasons given at different times for the applicant's unwillingness to do military service, and for the varying emphases placed on the claim itself. It was mentioned briefly, more or less as an afterthought in the entry interview; in the TPV application it was the only reason put forward and the applicant indicated that it was against his morals and ethics to serve a corrupt institution. At the TPV interview he simply said that he feared mistreatment in the military and that he did not want to fight or be killed "for no reason". In my view, if the applicant had really fled Egypt in order to avoid military service obligations, he would have presented consistent reasons for his unwillingness to undertake it. The fact that he has not done so further adds to my concerns about his credibility.
20. Having regard to the various inconsistencies, discrepancies and differences in the applicant's accounts given at various times and his demonstrated willingness to provide false information to the Department, and in the light of country information stating that if the applicant really had outstanding military service obligations he would not have been able to leave Egypt as he claims, I do not accept that the applicant has outstanding military service obligations which led to his decision to leave Egypt. I am not satisfied that he is at risk of harm for any reason associated with outstanding military service obligations on return.

Refugee: conclusion

21. 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

22. 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

23. 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.
24. The applicant does not claim to fear harm on return to Egypt for any reasons other than those put forward in support of his claims to refugee status. Because I have found, for the reasons set out above, that the applicant does not face a real chance of harm either from the MB or

because of any outstanding military service obligations, I am also satisfied that he is not at real risk of harm for those reasons.

Complementary protection: conclusion

25. 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

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

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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.

...

36 Protection visas – criteria provided for by this Act

...

- (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.

...

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.