



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

EGYPT

IAA reference: IAA18/05759

Date and time of decision: 25 October 2018 13:03:00

B Mericourt, 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 an 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 national. On 26 April he lodged an application for a Safe Haven Enterprise Visa (SHEV). In a decision dated 21 September 2018 the delegate of the Minister of Immigration and Border Protection (the delegate) refused to grant the visa.
2. The delegate was not satisfied that members of the Muslim Brotherhood or Salafists had attempted to recruit the applicant prior to his departure from Egypt in January 2013 or that there was any real risk or real chance he would suffer serious or significant harm from members of these group or any other person on his return to Egypt. She was not satisfied he was of any adverse interest to the Egyptian authorities prior to his departure, nor would he be of adverse interest to the authorities for reasons of his return as a failed asylum seeker. Nevertheless, the delegate accepted the applicant would possibly be subject to mandatory military service on his return to Egypt. However, she was not satisfied he would follow through with his stated intention to not comply and even if he did, she was satisfied there is no real risk or real chance he would suffer serious or significant harm as a consequence.

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).
4. No new information was provided by the applicant or obtained by the IAA.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - The applicant fears he will be harmed by the Muslim Brotherhood who tried to force him to join them. He was threatened and harmed by members of the Muslim Brotherhood prior to his departure and believes they will continue to do so on his return and he may be killed. His family members have received threats since his departure from Egypt;
 - He cannot obtain protection from the authorities as they are unable to protect people from the Muslim Brotherhood;
 - The applicant fears harm from Salafists who threatened him because he owned a business selling [goods] and because they wanted him to join their group but he refused to do so. His business was burned down in December 2012 by people he believes were Salafists and he was also beaten by them;
 - The applicant fears he will be harmed because he will refuse to undertake his compulsory military service on his return to Egypt;
 - The applicant fears harm as there are constant human rights violations and general violence in Egypt and it has become worse since his arrival in Australia;
 - He cannot relocate to anywhere else in Egypt as he will be questioned by locals and turned away.

6. The applicant did not explicitly make a claim of fear of harm for reasons of his membership of a particular social group, that is, returned failed asylum seekers, however, I accept this claim arises on the material before me and have assessed the claim.

Factual findings

7. The applicant's claims as to his identity and nationality have been consistent since his arrival in Australia. He conducted interviews in Arabic and has submitted copies of his birth certificate, National Identity card and driver's licence together with English translations. I accept the applicant's nationality and identity are as claimed and find Egypt to be the receiving country for the purpose of the application. There is no evidence before me to suggest that the applicant has a right to enter and reside in any country other than Egypt and I am satisfied he does not: s.36(3).
8. I am satisfied the applicant departed Egypt lawfully as the holder of a genuine valid passport and that it was taken from him by the Indonesian people smuggler.

Refugee assessment

9. 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

10. 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.
11. Real chance is a substantial chance as distinct from a remote or far-fetched possibility.¹

¹ *Chan v MIEA*, (1989) 169 CLR 379 at 389.

12. The applicant was born in the Western province, Egypt and is a Sunni Muslim. He completed high school and was studying [discipline] and running a business selling [goods] in Alexandria prior to his departure. His parents live in Alexandria, Egypt and his brother is currently residing in Australia as the holder of a student visa.

Claims of fear of harm from members of the Muslim Brotherhood and/or Salafists

13. At his entry interview on 7 April 2013 the applicant stated he left Egypt “because of the chaos and demonstrations and because of the incarceration of Mubarak. Also the Islamic Brotherhood is taking control of the country.” His shop had been burned during the uprising. He departed Egypt immediately afterwards (at the end of January 2013). He said the police had been coming every day to his shop telling him to close the shop because of the demonstrations.
14. On 27 May 2013 in an interview with the Department, the applicant made additional claims stating that if he is returned he and his parents will be in danger. When asked why, he said his shop was burnt and he was threatened that he would be killed by people called the Salafi. After they burned down the shop they asked him to work for them and said they would compensate him for the damage. If he didn’t cooperate he would be killed. These people advised him they would wait until his [exams] were over and then he had to give them an answer. During his exam period he decided to leave Egypt. Since his departure his brother has advised him they are looking for him in Egypt. The Department officer said he had attached reports about the applicant’s shop being burnt and him being bashed. These reports are not in the material forwarded to the IAA, however as discussed below, I am prepared to accept that these incidents occurred.
15. In his TPV application lodged on 30 May 2017, the applicant stated he had lived in an area highly influenced by the Muslim Brotherhood and they targeted him as he was perceived to have potential as an “insider” who knew people in the government and community. They wanted him to recruit other people and spy on others. He did not want to join them and this angered them and they threatened him. He knew his refusal meant death or being captured and tortured. They punished him by burning down his business. He decided to flee Egypt. Since that time President El-Sisi has come to power and most of the Brotherhood members have been prosecuted. However, the situation has become worse. Dedicated followers and members of the Brotherhood continue to have his name on a list of people for vengeance as a lesson to others. The applicant also believes that he will be seen as a traitor because he left Egypt. He believes that he cannot obtain protection as Egypt “is in war”, there is no order on the streets, the government is engulfed by corruption, politicians are being assassinated, people are being murdered, villages and towns are being bombed. There is nowhere in Egypt he can be safe as the Muslim brotherhood have spies everywhere.
16. In a written statement submitted to the Department on 17 September 2018, the applicant stated that the political situation in Egypt had changed dramatically after the fall of the Muslim Brotherhood President, Mr Mohammed Morsi. The Muslim Brotherhood no longer posed a threat to him and he wished to withdraw his claims relating to the Muslim Brotherhood. He lodged a new claim relating to mandatory military service (see below).
17. At his TPV interview conducted on 20 September 2018, the applicant stated he did not wish to withdraw these claims. The delegate put to the applicant inconsistencies in his claims stating that at his entry interview he had made no mention of being targeted for recruitment by the Muslim Brotherhood or Salafists and he had stated his shop was burned by the Salafists in May 2013 but in May 2017 he said it was the Muslim Brotherhood who burned

down his shop. The applicant responded that at his entry interview he had been told to be brief and had had no time to elaborate. It was the Salafists who had burned down his shop because [he sold specific kinds of goods] and the Salafists, who are very conservative, objected because it is against their religion and beliefs. He also said he had told his migration agent the whole story but when he listened to the recording and read the story his agent wrote he found there were inconsistencies. There was also some confusion about the written statement he had submitted two days earlier as his friend had written it and the applicant was insistent he did not wish to withdraw his claims, despite what was written in that statement. He said he only wished to add the new claim relating to his mandatory military service which he said he had told his agent before his application was lodged.

18. The applicant has been consistent about his shop being burned down and that he was beaten and had to have treatment at hospital in December 2012. He provided a police report about his shop being burnt down and a medical report from the hospital at which he was treated to the delegate. These reports were not provided to the IAA by the Department, however, I accept they are genuine and these incidents occurred.
19. The Department of Foreign Affairs and Trade (DFAT) in its 2017 Egypt country report states that after President Morsi was elected in June 2012 *“sporadic, large scale protests and violent clashes took place between Morsi’s opponents and supporters, and led quickly to crippling political polarisation in Egypt. Egypt experienced a major decline in law and order in the wake of the 2011 Revolution leading to a sizeable increase in violent crime, civil unrest and terrorist attacks.”*² I accept the applicant’s evidence that there was poor security and a breakdown of law and order at that time and that his shop was burnt down in December 2012, as were other businesses in the area, and that on one occasion he was beaten and needed to seek treatment for a [body part] injury also in December 2012.
20. However, I have concerns about the inconsistencies in the applicant’s evidence about whether or not the Muslim Brotherhood or the Salafists attempted to recruit him. Although I accept that he was told to keep his answers brief at his entry interview, he was asked if he knew who burned his shop and he said he did not know because it was during the uprising. He was asked if there were any other reasons that made him leave Egypt and he said no. Since his entry interview he has changed his story from being recruited by the Salafists to being recruited by the Muslim Brotherhood and then back to being recruited by the Salafists.
21. I accept the applicant was undoubtedly distressed and probably frightened when his shop was burnt down and he was beaten and that this was a significant reason for his departure from Egypt at the time. However, I do not accept any of his evidence about events at this time as claimed in his written application for protection dated 30 May 2017 and I am not satisfied that any members of the Muslim Brotherhood or Salafists have his name on a list and are seeking vengeance because he refused to join. I am not satisfied his parents are in danger as he has provided no details at all about this claim. I do not find the applicant’s evidence credible that his brother told him that people were looking for him after he left Egypt.
22. DFAT reports that since the interim military regime was reinstalled in power in July 2013 security forces violently suppressed pro-Morsi demonstrations protesting the military intervention and the Muslim Brotherhood was subsequently re-designated as a terrorist organisation. Key senior leaders have been in detention since the July 2013 military intervention and large-scale arrests of Brotherhood members and supporters continue to

² Department of Foreign Affairs and Trade, “DFAT Country Information Report Egypt”, 19 May 2017, CISED50AD4203

occur in the context of counter-terrorism operations. Ordinary inactive members or party supporters are likely to be under the close attention of authorities and subject to surveillance and monitoring of their activities.³

23. Given the above country information and the fact that I do not find the applicant's evidence credible that he was actively recruited by either the Muslim Brotherhood or the Salafists, that his parents were in danger or his brother told him people were looking for him after his departure, I am satisfied there is no real chance the applicant will be targeted for serious harm by members of either of these organisations, or by the Egyptian authorities or by any other person, for reasons of his actual or imputed political opinion or for any other reason, if he is returned to Egypt now or in the reasonably foreseeable future.

Claims of fear of harm for reasons of the applicant's membership of a particular social group, that is people who refuse to undertake their compulsory military service

24. The applicant now claims that his refusal to undertake compulsory military service is the main reason that he fears returning to Egypt.
25. I am satisfied the applicant has not completed his compulsory military service in Egypt as he was still a student at the time of his departure and was therefore temporarily exempted. I am satisfied that military service is compulsory for all males over the age of 18 in Egypt under Article 86 of the Constitution, unless there are reasons they are provided with an exemption⁴.
26. The UK Home Office reports the website 'Global Firepower' noted that 1,535,000 men reach military age annually and only a fraction of these men were conscripted to serve in the army.⁵
27. Country information indicates that exemptions are granted for medical reasons, family reasons including when an individual is an only son or the only breadwinner, or has a father or brother who died while serving in the military or who has a brother already serving in the military or who is supporting the family and has brothers who have migrated. Students are granted exemptions up till the age of 28 years. Final exemptions from military service are granted when the individual turns 30.⁶ The applicant is [age] years old at the date of this decision and therefore would be required to undertake mandatory military service unless he meets any of the requirements for further exemption. I note that his parents are retired and his only brother is currently studying in Australia. Nevertheless, I accept the applicant may not be granted an exemption and would therefore be required to undertake up to three years mandatory service.
28. I had regard to the applicant's evidence in his statement of 17 September 2018 to the Department in which he said "*I oppose completing national military service on the basis of my political opposition to the current Sisi regime and its human rights violations. I do not want to be a member of the Egyptian military which is being used by the Sisi regime to oppress its own people. I do not wish to serve in the oppressive Sisi regime. I would serve in the Egyptian military if it were protecting its people rather than oppressing its people.*" At his TPV interview he said that he did not wish to undertake his military service while President El-Sisi was in power as he used the military to back him up and the military no longer looked after their

³ Department of Foreign Affairs and Trade, "DFAT Country Information Report Egypt", 19 May 2017, CISED50AD4203

⁴ Department of Foreign Affairs and Trade, "DFAT Country Information Report Egypt", 19 May 2017, CISED50AD4203; UK Home Office, "Country Policy and Information Note: Egypt: Military service", 15 March 2017, OG6E7028818; European Asylum Support Office, "Military service in Egypt", 09 October 2015, CISEC96CF15045

⁵ UK Home Office, "Country Policy and Information Note: Egypt: Military service", 15 March 2017, OG6E7028818

⁶ Department of Foreign Affairs and Trade, "DFAT Country Information Report Egypt", 19 May 2017, p.23, CISED50AD4203

own but instead “were killing them”. The applicant stated that he had no problem following the rules of undertaking military service but not if it meant perpetuating human rights abuses under the current Egyptian government. The applicant’s evidence suggests that he is not a conscientious objector or pacifist per se, but he objects to undertaking military service under the current regime for political reasons. He also expressed concerns that he would be killed if he undertook military service as he would be sent to the front or to the Sinai area where the military was engaged in conflict.

29. DFAT reports that service conditions for military conscripts vary considerably. Some conscripts have been sent to the military front lines in North Sinai, while others have been dispatched to police urban areas.⁷ The UK Home Office report on military service in Egypt notes that conscripts may be required to serve either in the police force, the prison guard service or in one of the military economic service units.⁸ The same report quotes a July 2015 article on Mutfah.org which described military service as a ‘lost’ period *“during which young men in their prime are ruthlessly hazed for the sake of protecting desert airstrips, embassies, or government run supermarkets. Some conscripts are even put to work in government-run factories that supply those government-run supermarkets”*⁹. The Egyptian Government delineates several administrative zones for conscription and has a council of military officers, civil officials and medical officers who select draftees. Local mayors and village leaders also participate in the selection process. After the Council grants exemptions and deferments it chooses conscripts by lot from the roster of remaining names. Individuals eligible to be inducted are on call for three years. After that period they can no longer be drafted.¹⁰
30. The above country information suggests that both the size of Egypt’s security forces and the fact that the Constitution provides a variety of options for national service, means that there is a very small possibility that he will be conscripted and sent to North Sinai or another area where there may be conflict. There is no information before me that indicates there is any real chance the applicant would be forced to commit any human rights abuses during his military service even if sent to a conflict area.
31. In considering the applicant’s claim I have taken into account the applicant does not currently have a passport and, in order for him to return to Egypt, he would need the Egyptian Consulate in Australia to issue him with a travel document or a new passport. In these circumstances I accept that the issue of his past exemption and outstanding military service obligation will come to the attention of the authorities and it is likely he will be served with his papers on his return. However, there is no information before me that there are grounds to believe there is a real risk he will be detained or imprisoned on his arrival. It is more likely he will be served his papers either on his arrival or soon after his arrival and asked to attend the relevant office.
32. The applicant has stated that he will refuse to undertake military service under the current El-Sisi regime. As military service is compulsory for all men aged between 18 and 30 years unless they qualify for an exemption this means it is a law of general application and will not ordinarily constitute persecution because the application of such a law does not amount to discrimination.¹¹ There is no evidence before me that suggests this particular law in Egypt is selectively enforced or applied in a discriminatory manner. Military service is mandatory in many countries and laws regarding compulsory military service including in Egypt are

⁷ Department of Foreign Affairs and Trade, “DFAT Country Information Report Egypt”, 19 May 2017, p.23, CISED50AD4203

⁸ UK Home Office, “Country Policy and Information Note: Egypt: Military service”, 15 March 2017, OG6E7028818

⁹ Ibid

¹⁰ European Asylum Support Office, “Military service in Egypt”, 09 October 2015, CISEC96CF15045

¹¹ Chen Shi Hai v MIMA (2000) 201 CLR 293; and Applicant A v MIEA (1997) 190 CLR 225

appropriate and adapted to achieving legitimate state objectives of providing personnel for defence and security.

33. I consider in the applicant's case there are three possibilities: (1) he performs military service (which is the most likely possibility in my opinion); (2) he receives his conscription papers, does not report and does not come to the attention of the authorities until after he is 30 years old; or (3) he receives his conscription papers, does not report and comes to the attention of the authorities before he turns 30 years old.
34. If the applicant does follow through on his intention to refuse to undertake his military service DFAT reports that he is liable to pay a fine of up to EGP1000 (approximately AUD170) and/or to face a minimum of one year's imprisonment.
35. It is unclear how many people have been imprisoned in Egypt for evading military service.¹² A report from Al Monitor in July 2015 about arrests by the Egyptian authorities of conscripts who refuse to serve gives no indication that they are mistreated or subjected to harsh penalties.¹³ There is no information before me to suggest that people who refuse to serve in the Egyptian military are accused of being supporters of the Muslim Brotherhood or any other anti-government or political organisation.
36. The UK Home Office states that compulsory military service is a prerogative of sovereign states. A requirement to undertake – or punishment for failing to complete – national military service will only constitute persecution where military service would involve acts, with which the person is associated, which are contrary to the basic rules of human conduct (not international law); the conditions of military service would be so harsh as to amount to persecution; or the punishment for draft evasion or desertion is disproportionately harsh or severe. The UK Home Office assess none of those conditions are generally met in respect of military service in Egypt.¹⁴
37. Based on the above information I am not satisfied that if the applicant were to be fined and arrested and imprisoned for refusal to undertake military service or if he were forced to undertake military service that this would amount to persecution within the meaning of s.5J(4), or that the reasons in s.5J(1) are the essential and significant reason or reasons for the persecution.
38. I have found that the applicant was of no adverse interest to the Egyptian authorities prior to his departure. He has given evidence that he has never been involved in a political party or demonstrations against the government. At his interview he was at pains to point out that he is a law-abiding and peaceful person. I consider there is nothing to suggest that he would be subjected to a harsher penalty than a prison term of one year and a fine or that he would be subjected to any form of mistreatment that would amount to or constitute serious harm. I do not consider the imposition of a fine equivalent to approximately AUD170 to constitute serious harm.
39. As discussed above, the deprivation of the applicant's liberty for up to one year is a lawful sanction in Egypt and therefore does not constitute persecution. With regard to conditions inside Egyptian prisons, DFAT reports that in general prison conditions are poor and do not meet international standards because of overcrowding, poor sanitary conditions and

¹² Department of Foreign Affairs and Trade, "DFAT Country Information Report Egypt", 19 May 2017, p.23, CISED50AD4203

¹³ Al Monitor, "Egypt's draft dodgers", 22 July 2015, CXBD6A0DE18468

¹⁴ UK Home Office, "Country Policy and Information Note: Egypt: Military service", 15 March 2017, pp.10-11, OG6E7028818

widespread violence.¹⁵ Given the country information about prisons in Egypt I accept that all inmates are at risk of violence in prisons, but the available information does not indicate or support a finding that there is a real risk the applicant will suffer serious or significant harm just as a result of his presence in a prison as an inmate without some additional factor. I am not satisfied that being detained in a prison with conditions that fall below international standards constitutes serious harm, having regard to the extensive examples of serious harm in s.5J(5) of the Act.

40. Overall, taking all the above into account, I am not satisfied that there is a real chance the applicant will suffer serious harm if he is conscripted or if he refuses to undertake mandatory military service if he is returned to Egypt now or in the reasonably foreseeable future.

Claims of harm for reasons of the applicant's membership of a particular social group, that is, returned failed asylum seekers

41. The applicant has not raised this claim himself but the delegate addressed the issue in her decision. I have therefore given consideration to the issue as a claim arising on the material before me.
42. I am satisfied the applicant departed Egypt legally as the holder of a valid genuine passport. The applicant reported that he had no difficulty obtaining a passport or leaving Egypt on an international flight from Cairo. The applicant stated he had never been a member of a political party or participated in demonstrations against the government. I am therefore satisfied the applicant had no adverse political profile in Egypt prior to his departure.
43. DFAT reports that;

"The International Organisation for Migration (IOM) runs a program in Egypt that assists voluntary returnees, in cooperation with the country from which they are returning. Egyptian authorities cooperate with the IOM in these arrangements. DFAT assesses that people who return to Egypt after several years' absence will not face any adverse attention on their return due to their absence. Likewise, DFAT assesses that failed asylum seekers will not face adverse attention because of their failed application for asylum when they return to Egypt.

*Egypt accepts in voluntary returnees. Egyptian officials generally pay little regard to failed asylum seekers upon their return to the country, although it is possible some individuals will be questioned upon entry or will have their entry delayed. DFAT is not aware of failed asylum seekers being reported by airport authorities to the Ministry of the Interior or any of the security services beyond the normal processes for returning Egyptian nationals."*¹⁶

44. Based on the above country information, I am satisfied there is no real chance the applicant will suffer serious harm for reasons of his membership in particular social group, that is, failed asylum seekers who return to Egypt either voluntarily or involuntarily.

Fear of serious harm as a consequence of general violence and human rights violations in Egypt

45. DFAT reports that President El-Sisi's strong emphasis on internal security has largely restored general law and order throughout most of Egypt and large-scale ongoing protests such as those experienced in 2011 and 2013 have declined considerably. Recent terrorist attacks

¹⁵ Department of Foreign Affairs and Trade, "DFAT Country Information Report Egypt", 19 May 2017, p. 32, CISED50AD4203

¹⁶ Ibid p.34

have primarily targeted security personnel and facilities or Coptic Christian churches.¹⁷ There is no information before to suggest that the applicant would be targeted for human rights violations in Egypt. Based on country information I am not satisfied that there is such a high level of violence and lack of law and order or human rights violations that the applicant would be targeted for serious harm if he were to return to Egypt now or in the reasonably foreseeable future.

46. Even if I were to accept there is currently such conflict, generalised violence and human rights violations in Egypt such that there is a real chance the applicant will suffer serious harm I do not consider this would be for reasons in s.5J(1) of the Act and it would therefore not amount to persecution.

Cumulative consideration of claims

47. I have had regard to the applicant's claims both individually and cumulatively, and find there is no real chance he will suffer serious harm for any reason if he is returned to Egypt now or in the reasonably foreseeable future.

Refugee: conclusion

48. 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

49. 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

50. 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.
51. Real chance and real risk involve the same standard.¹⁸
52. For the reasons discussed above, I consider there is no real risk the applicant will suffer significant harm as a consequence of events that occurred at the end of 2012 when his shop was burned down and he was assaulted. I do not accept the applicant's evidence is credible

¹⁷ Ibid

¹⁸ *MIAC v SZQRB* (2013) 210 FCR 505

that members of the Muslim Brotherhood or the Salafists attempted to recruit him and would now seek to inflict harm on him or kill him because he refused to join them before he departed Egypt over five years ago in January 2013. I am not satisfied that they looked for him after he left or that his parents were in danger. I am satisfied there is no real risk the applicant will suffer significant harm from members of the Muslim brotherhood, the Salafists or any other group of persons or person if he is returned to Egypt now or in the reasonably foreseeable future.

53. I consider the applicant had no adverse political profile with Egyptian authorities prior to his departure and that he would be of no interest to them except for reasons of his evasion of national military service by departing the country. I am satisfied there is no real risk the applicant will be of adverse interest to the authorities because he applied for asylum in Australia and there is therefore no real risk he will suffer significant harm on his return for this reason.
54. I accept there is a real risk the applicant will be served with his papers for mandatory military service on his arrival or soon after his arrival in Egypt. In the event that he continues with his intention not to undertake military service and does not successfully evade the authorities until he turns 30, I accept that he will be subject to arrest, a fine and up to one year's imprisonment under Egyptian law. These are lawful sanctions.
55. I am satisfied the imposition of a fine of up AUD170 does not constitute significant harm for the purposes of s.36(2A)
56. I have given consideration to whether being detained in a prison with conditions that fall below international standards could constitute 'torture' or 'cruel or inhuman treatment or punishment' or 'degrading treatment or punishment as defined in the Act. I am not satisfied that there are substantial grounds to consider there is a real risk that being in such conditions would cause him severe pain or suffering, or pain or suffering that could reasonably be regarded as 'cruel or inhuman treatment or punishment' which is inconsistent with Article 7 of the Covenant; or cause him extreme humiliation that constitutes 'degrading treatment or punishment' which is inconsistent with Article 7 of the Covenant; or cause him 'severe pain or suffering' that could be characterised as 'torture'. Further, I note that the definition of 'cruel or inhuman treatment or punishment' in s.5(1) requires that pain or suffering be 'intentionally inflicted' on a person and that the definition of 'degrading treatment or punishment' requires that the relevant act or omission be 'intended to cause' extreme humiliation. I consider it clear from the relevant statutory provisions that mere negligence or indifference is not sufficient: what is required is an intention to inflict pain or suffering or to cause extreme humiliation. I do not consider this to be the case if the Egyptian state imposes a punishment of imprisonment on the applicant for his failure to undertake mandatory military service.
57. I am therefore satisfied there is no real risk the applicant will suffer significant harm if he either undertakes military service or is arrested, fined and imprisoned if he follows through with his intention to evade military service on his return to Egypt.
58. As discussed above, based on relevant country information I do not accept there is such a high level of generalised violence, lack of law and order or human rights violations such that there is a real risk the applicant will suffer significant harm if he returns to Egypt now or in the reasonably foreseeable future.

59. Considering the treatment I have accepted the applicant will experience as a whole, I am not satisfied that it cumulatively amounts to significant harm. Nor am I satisfied that there is a real risk that the applicant will suffer significant harm based on the cumulative effect of his circumstances and profile.

Complementary protection: conclusion

60. 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

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.

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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.