

1400085 [2014] RRTA 367 (12 May 2014)

DECISION RECORD

RRT CASE NUMBER: 1400085

COUNTRY OF REFERENCE: Jordan

TRIBUNAL MEMBER: Rodger Shanahan

DATE: **12 May 2014**

PLACE OF DECISION: Sydney

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a **citizen of Jordan**, applied to the Department of Immigration for the visa [in] June 2013 and the delegate refused to grant the visa [in] December 2013.
3. The applicant appeared before the Tribunal on 1 May 2014 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
4. The applicant was represented in relation to the review by his registered migration agent.

CLAIMS AND EVIDENCE

Protection Visa Application

5. The applicant claimed that he left Jordan with the sole intention of seeking protection. He has felt suffocated because of the lack of democracy and does not consider the Jordanian government to be a lawful government. He always held political views opposed to those of the government, however he was never involved with any political party or movement while in Jordan. He claimed that he would have been killed or prosecuted (and his family persecuted) if he voiced anti-government opinions.
6. Around May 2012 he was arrested on a charge of selling non-halal meat and jailed for 48 hours but was released after Jordanian authorities examined the meat and found the accusation to be wrong. During the time he was jailed he was degraded and assaulted. After his release he went to the public prosecutor and asked that legal action be taken against the police officer and the Jordanian government for false imprisonment. He told the public prosecutor that he held the King responsible for his false imprisonment and lack of justice.
7. The next day his [shop] was closed for two weeks because of this complaint. He suffered psychological pressure as a result and was forced to go back to the public prosecutor and withdraw his complaint. He was then allowed to re-open his business. He was stressed as a result of the incident and felt that if he stayed in Jordan any longer he would again express anti-government political opinion which could lead to his death.
8. He claims that he is a reformist whose political opinion is not tolerated by the Jordanian government. If he were to return to Jordan he would continue to express his anti-government opinions.

RRT Hearing

9. The applicant claimed that if he returned to Jordan he would be imprisoned and tortured by the police and intelligence because he had protested against the government. He first had this fear prior to 2012 (from the middle of January of 2011) when he used to be taken by the government. He had not previously told his solicitor this. He also claimed that government authorities would

shut down any businesses that he opened – this occurred to [both his shops]. He had no other claims.

10. He claimed that he took part in the big protest at the Interior Ministry in 2012. He began participating in 2011 and before 2012 he had been detained and tortured three times by the authorities. Asked to be more specific, he claimed that at the Interior Ministry demonstration there were groups of them yelling slogans and the police would take some of them. Asked how he found out about the protests, he claimed there would be an official announcement about the demonstration; asked what this meant he claimed that Islamic organisations in mosques would announce the details of the protests.
11. He attended four or five protests altogether, including three in 2011. He was arrested on three or four occasions; three times in 2011 and once in 2012 for two days. These were all during demonstrations and he was accused of swearing at the government and the king and was tortured. He was never formally charged or taken before the court, nor was he a member of any political party.
12. Regarding his business closures, in May 2012 he was accused by the police of slaughtering [an animal] that was off and this was illegal. After he was accused he was taken and imprisoned for two days; a doctor came and examined and confirmed that the meat had been killed in a halal manner. By the time he was released his shop had been closed for two weeks. It was put to him that he had said he had been detained for two days and yet his shop was closed for two weeks and he agreed that this was the case.
13. He complained to the police prosecutor and was told that if he dropped his complaint it would be opened again. He did as he was asked and his shop was opened. This occurred about one month before he left Jordan. It was put to him that he had claimed his business was closed in May 2012 which was a year before he came to Australia. He claimed he was confused, and then claimed that [Shop A] was closed a month before he came and [Shop B] was closed in 2012. It was put to him that he needed to be clear and had not mentioned the [Shop A] previously.
14. He claimed that he had opened [Shop A] in 2012 but couldn't remember the date. It was put to him that opening a new shop was significant and he claimed it was about two months before he came or even about February. Asked to be more specific given he had only ever had two shops he claimed it was February 2013. [Shop B] was not open at this stage because the authorities kept pursuing him and finding different reasons for closing it.
15. Asked to be more specific about what occurred to him regarding [Shop B], he claimed that people who were against the government were restricted and they placed pressure on him which was why he came to Australia. Asked to clarify what he meant by pressure and restrictions, he claimed that the government would try to upset them and ensure they weren't comfortable. He had to pay a lot of money for the licence and then would shut him down.
16. After he opened [Shop A], it was closed by the authorities. They would create any reasons against people who spoke against the government to allow them to shut shops. The shop was closed for two weeks, it was re-opened for a week and then he thought he would close it down and come to Australia. Asked when he closed it down, he claimed he closed it a month after it re-opened; it was about March 2013.

17. Asked when he applied for a tourist visa for Australia, he claimed that it was [in] May 2013. Asked if he had claimed at the time if he was working, he claimed that he said he was working in private interests and had real estate. [Details of shop deleted].
18. It was put to him that there was a great discrepancy between the amount of anti-government political activity he had claimed during this hearing and what he had claimed in his protection visa application. In his application he had made no mention of attending protests, being arrested or experiencing torture which raised concerns that he had actually participated in any protests as it was reasonable to believe that these issues would have been raised by someone seeking protection. In his application he had only mentioned the closure of [Shop B].
19. He claimed that his solicitor had not asked him about his political activities and just asked him to tell his story. It was put to him that if he had been arrested four or five times, beaten and tortured then he didn't need a solicitor to ask him whether such events occurred; he needed to establish his own claims. He agreed but said that he only answered questions he was asked by his solicitor.
20. Country information was put to him that anti-government protests had been largely peaceful, and while there were reports that there was some violence and arrests in 2012, he had claimed that he had been detained and tortured on three occasions in 2011 which wasn't supported by the information. He claimed that the media didn't track what happened to every individual.
21. Asked if he had any documentary evidence about the closure of his shops, he said he could prove his claims as the Council in Jordan would have them. Asked if he could provide them, he claimed he could try but he thought it was impossible for the Council to give the papers due to their laws.
22. It was put to him that he had a passport issued [in] 2013 and he agreed that he did but there was no need for an intelligence check because he already had a passport 20 years previously. It was put to him that he had been arrested, beaten, tortured and had his shop closed twice and yet he had no problem in renewing his passport or leaving the country which was inconsistent with the degree of interest he claimed the security authorities had in him. He claimed that the government had a policy of making it easy for troublemakers to leave the country.
23. It was put to him that if he was a political activist then surely the authorities would want to keep an eye on him to know what he was doing. He agreed but said he hadn't claimed to be a leader so they made it easy for him to leave. He had not undertaken in any political activities in Australia as he didn't know how. It was put to him that he could be active on social media; he claimed that he had been arrested five times, tortured and had his livelihood taken away and yet he had done nothing against the government.
24. He claimed that he was going to write about how well Australia treated people compared to Jordan. Asked why he hadn't done it already given he had been here a year, he claimed if he was returned he would be treated even more harshly but he could do it against them if he had an Australian passport. Asked why he couldn't write under a different name in order not to reveal his identity, he claimed that hopefully he would do this.
25. The applicant's adviser claimed that the applicant was illiterate and didn't know anything about social media. He claimed his age and background should be taken into account; it was put to him that the applicant was only [in his 50's]. Asked why the protests, detention and torture didn't form part of the application, he claimed that he didn't ask the applicant about his torture and new

evidence had come to light because of the questions the Tribunal had asked. He also claimed that his wife had been sick which had also impacted on his recollections. He further claimed that media did not show everything that happened to people at protests; he was asked to provide independent country information to support such a claim.

CONSIDERATION OF CLAIMS AND EVIDENCE

26. The applicant arrived in Australia on a visitor's visa on 29 May 2013. He applied for a protection visa on 28 June 2013. The Tribunal sighted his Jordanian passport as proof of his identity and his claim will be assessed as such.
27. The applicant is [in his 50's], a Jordanian from Amman. He claimed that he feared returning to Jordan as he would be imprisoned, tortured and possibly killed by the police and intelligence because he had protested against the government, and that the government authorities would close any business that he tried to open.
28. In considering an applicant's account, undue weight should not be placed on some degree of confusion or omission to conclude that a person is not telling the truth. Nor can significant inconsistencies or embellishments be lightly dismissed. The Tribunal is not required to accept uncritically any and all claims made by an applicant.
29. I found the applicant's evidence regarding his claims to lack credibility. For reasons set out below I did not find the applicant to be a reliable, credible or truthful witness, and that he fabricated his entire claim in order to be granted a protection visa.

Political Activity

30. I do not accept that the applicant was politically active in Jordan, publicly criticised the King, that he has attended any political protests or that he has been either detained or tortured by the Jordanian authorities. Despite claiming during his hearing to have attended four or five protests and been arrested, detained and tortured by the Jordanian authorities on four occasions, he made no mention of any of these claims in his protection visa application.
31. His only claim to persecution made in his protection visa application related to the alleged closure of [Shop B] by the Jordanian authorities. Given the seriousness of the claims regarding his protest activity, detention and torture I do not accept that he failed to mention this in his protection visa application simply because the solicitor never asked him. It is reasonable to expect that given the nature of his claims, he would not have needed to be specifically asked about the occurrence of these events by his solicitor
32. This finding regarding his lack of interest or participation in anti-government political activity is strengthened by the fact that he has undertaken no anti-government activity in the 11 months he has been in Australia. I do not accept that he has failed to enunciate any anti-government feelings in writing or on social media because he didn't know how to, because he would be treated more harshly if he was returned to Jordan or, as his adviser claimed, because he was illiterate.
33. The applicant has never claimed to be illiterate prior to the hearing and during his hearing he also claimed that he was going to write how well Australia treated people compared to Jordan, which indicates a level of literacy on the part of the applicant. If the applicant was as motivated as he claimed to be in expressing anti-government views then it is reasonable to expect him to make

some effort to find ways of expressing that sentiment in Australia. He could have learnt how to use social media and adopted a pseudonym to hide his real name if he so chose. The lack of any attempt at expressing anti-government sentiments in Australia is inconsistent with the degree of anti-government activity he claimed to have been part of in Jordan.

Closure of shops

34. Post-hearing the applicant provided a letter from [his] Municipality stating that the applicant owned [Shop A] that was closed for health reasons [in] 2013. I accept that this occurred, however there is nothing to indicate the length of the closure nor of what remedial action was required to re-open it, or whether he sought to re-open it. I lend this letter no weight as proof of government persecution or of a dedicated effort on the part of authorities to stop the applicant from opening businesses. Health closure of shops is a regular occurrence in all bureaucratised societies, including Australia.
35. No letter was given to the Tribunal in support of the claim that the applicant owned [Shop B] that was closed down in 2012. Given the applicant's credibility issues, I do not accept that the applicant also had [Shop B] that was targeted for closure because of anti-government political activity on the applicant's part or that he was detained for selling non-halal meat.
36. His claim regarding the way in which the government allegedly targeted him was also vague. He claimed that the government tried to upset them and make sure they weren't comfortable and that he had to pay a lot of money for his licence.
37. The actions surrounding his access to government authorisation is also not consistent with someone who is targeted by the authorities. He was able to open [Shop A] after he allegedly closed [Shop B], was able to renew his passport [in] 2013 (after his alleged arrests, detention and torture) and to leave the country without any difficulty. These are not the actions that someone under pressure from the authorities for anti-government political activity could reasonably be expected to have carried out without great difficulty, if at all.
38. I do not accept that the Jordanian government is happy to allow anti-government political activists to leave the country. Given that they would be free to carry out anti-government political activity more easily externally, it is reasonable to assume that if the authorities were interested in monitoring anti-government activists they would want to keep them inside the country.
39. Having had regard to all the evidence, and the applicants' claims both singularly and cumulatively, the Tribunal finds that the applicant does not have a well-founded fear of persecution for any Convention reason either now or in the reasonably foreseeable future.

Complementary Protection

40. Because I do not accept that the applicant has been politically active in Jordan or would be in the future, or that he has had businesses closed by the authorities because of such political activity or would in the future, I am not satisfied that there are any substantial grounds for believing that there is a real risk that the applicant will suffer significant harm.
41. As a consequence I also do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Jordan,

there is a real risk that the applicant will suffer significant harm on the basis of these claims as outlined in the complementary protection criterion in s.36(2)(aa).

CONCLUDING PARAGRAPHS

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

DECISION

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

Rodger Shanahan
Member

ATTACHMENT A – RELEVANT LAW

1. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the ‘refugee’ criterion, or on other ‘complementary protection’ grounds, or is a member of the same family unit as such a person and that person holds a protection visa.
2. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
3. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia 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 applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) (‘the complementary protection criterion’).
4. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – to the extent that they are relevant to the decision under consideration.