

1211064 [2013] RRTA 807 (5 December 2013)

DECISION RECORD

RRT CASE NUMBER: 1211064
DIAC REFERENCE(S): CLF2012/56617
COUNTRY OF REFERENCE: Stateless (Jordan)
TRIBUNAL MEMBER: Shahyar Roushan
DATE: 5 December 2013
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 stateless Palestinian and formerly resident in Jordan, arrived in Australia [in] January 2012 on a Visitor visa. He travelled to Australia on a 'two-year' temporary Jordanian passport. He applied to the Department of Immigration (the department) for a protection visa [in] March 2012. His claims are set out in a statement attached to his application form (see folios 39-40 of the department's file). He also provided additional evidence to the department at an interview with a delegate of the Minister [in] June 2012.
3. The applicant appeared before the Tribunal [in] August 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The applicant was represented in relation to the review by his registered migration agent. The applicant's representative provided the Tribunal with two submissions, dated [in] July 2013 and [in] August 2013, respectively. The applicant's claims throughout the process and the contents of the submissions made on his behalf have been considered further below.
4. The applicant claims that he is a holder of a two year Temporary Passport (Gaza) issued by the Jordanian authorities. He does not have the right to enter or reside in the Palestinian Territories. Throughout his schooling he was discriminated against and physically punished on account of his Palestinian ethnicity. He claims that as a Palestinian every time he tried to obtain documents from government departments he was treated badly and had to wait longer than usual. He claims that when he first applied for his own passport in 2001, he was investigated and regularly questioned by the secret police before being granted a passport six months later. He claims that he had a similar experience when applying for his driver's license in 2001. In 2003, when he approached the authorities to renew his passport, he was sent to the secret service. He was blindfolded, questioned and beaten. He claims that he suffered [an injury] which required hospital treatment. He claims that in the same year he was standing outside a restaurant with some friends when they were approached by the police and taken to a police station. The applicant was [beaten] and detained for [days]. He claims that in 2006 he was in the company of his friends, including [Mr A], whose father is involved with Hamas, when they were approached by the police and taken to the police station. While the police released [Mr A], the applicant and another person were detained and beaten for [days]. He claims that the police wanted to discourage him from associating with [Mr A], who enjoyed a 'protected' status. The applicant claims that he resided in [Location 1] between 2007 and 2009. He claims that upon his return to Jordan his passport was confiscated, he was questioned and told to report to the secret service. When he did so, he was punched and detained for [days]. He was again questioned when he applied for another temporary passport. He claims that whenever the police stop him on the street and find that he is Palestinian they beat and temporarily detain him. He claims that he has no freedom in Jordan and cannot travel from city to city. He claims that he cannot own property in Jordan or marry his Jordanian girlfriend. He claims that when he was leaving Jordan to come to Australia, he was questioned for an hour and kicked.

5. The delegate refused to grant the visa [in] July 2012. The delegate accepted that the applicant's status in Jordan as a non-citizen Palestinian places limitations on his rights, including access to healthcare; education and social services; work and property ownership and family life. However, on the basis of the applicant's personal circumstances, he did not accept that the applicant had or would suffer discrimination amounting to persecution. The delegate noted that there appears to be no reliable country information that suggests that Palestinians are routinely detained, beaten or tortured because they are Palestinian. On the basis of an absence of any country information to support the applicant's claims, the delegate found the applicant's claim that all Palestinians in Jordan are routinely mistreated by the authorities to be outlandish and fabricated. Similarly, the delegate did not find credible the applicant's claims that he was detained and mistreated by the police due to his perceived links with Hamas. The delegate was not satisfied that the applicant faces a real chance of being routinely detained and abused by the authorities in Jordan because he is Palestinian. He was not satisfied that the applicant would be viewed by the authorities in Jordan as having links to Hamas. He was also not satisfied that there are 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 the applicant will suffer significant harm.

CONSIDERATION OF CLAIMS AND EVIDENCE

6. 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.
7. 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).
8. 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').
9. 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 – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.
10. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

11. The applicant travelled to Australia on two-year temporary Jordanian passport issued to Palestinian refugees from Gaza. Being a holder of a Jordanian passport does not necessarily make the applicant a Jordanian citizen. Palestinians from Gaza displaced to Jordan after 1967 generally do not have access to Jordanian citizenship. They are, however, able to obtain Jordanian passports of two-year validity. Such passports differ from standard Jordanian passports by the absence of a national identification number.¹ In the absence of any other documents to conclusively establish the applicant's nationality, the Tribunal finds that the applicant is stateless Palestinian and must be assessed against his 'country of former habitual residence'.
12. The applicant's parents are both Palestinian. His mother, however, holds Jordanian citizenship. The applicant was born in Amman, Jordan [and] resided in that country until 2007 when he travelled to [Location 1], where he stayed for two years. He then returned to Jordan and remained in that country until he was able to travel to Australia in January 2012 on a two-year temporary passport. On the basis of the evidence before it, the Tribunal is satisfied that Jordan is the applicant's country of former habitual residence.
13. The applicant was issued with successive two-year Jordanian passports from 2001 onwards. This suggests that the under Jordanian law he was provided with a form of permission to habitually reside in that country. The Tribunal finds that Jordan is the applicant's country of 'habitual residence' and therefore the receiving country for the purposes of assessing his claims under the complementary protection criterion.
14. The Tribunal accepts that Palestinian refugees from Gaza who entered the country following the 1967 and their descendants are subjected to discrimination in Jordan. The country information before the Tribunal suggests that they are not entitled to citizenship and are excluded from services, such as the right to health care, education in public schools and universities, employment in the public sector, and to the professions and other rights exclusively reserved for Jordanian citizens.² This information is consistent with the information contained in the applicant's representative's submission [in] July 2013.
15. The Tribunal appreciates that the applicant was not allowed to study in a government school or attend a Jordanian government university. Nevertheless, he was able to attend a private school and complete his tertiary studies at [an institute] in Amman. The applicant might have experienced some discrimination and/or was subjected to corporal punishment, in the form of being beaten on his hand with a cane, in the final two or three years of his schooling. According to his evidence at the hearing, the applicant was employed at [a company] from 2004 to 2007. He continued working at [that company] after his return to Jordan from [Location 1] and in May 2011 he began [working] with [another company]. Following his

¹ Olwan, MY 2011, *Migration Trends and Patterns in Jordan: The Human Rights Context*, The American University in Cairo, 10 October, p.5
[http://www.aucegypt.edu/GAPP/cmrs/reports/Documents/OLWAN\[1\]_10.10.2011\[1\].pdf](http://www.aucegypt.edu/GAPP/cmrs/reports/Documents/OLWAN[1]_10.10.2011[1].pdf); US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Jordan*, March, Section 2(d); United States Committee for Refugees and Immigrants (USCRI) 2009, *World Refugee Survey Jordan 2009*; June and Khalil, A. 2009, 'Palestinian Refugees in Arab States: A Rights-Based Approach', CARIM (Euro-Mediterranean Consortium for Applied Research on International Migration) Research Reports 2009/08, Robert Schuman Centre for Advanced Studies, European University Institute, p.23.

² Olwan, MY 2011, *ibid*; and United States Department of State 2013, *Country Reports on Human Rights Practices for 2012 – Jordan*, 19 April, Section 2d & 6
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204367>.

parents' migration to Australia in 2001, the applicant resided with his [relative] in a flat owned by the latter.

16. The applicant claims that as a Palestinian he would not have been able to marry his Jordanian girlfriend. However, the applicant did not claim that he intended to do so if he were to return to Jordan. Indeed, he submitted to the Tribunal an Islamic Marriage Certificate showing that he is now married to an Australia citizen.
17. On the basis of the evidence before it and having considered the applicant's circumstances, the Tribunal is not satisfied that the discrimination the applicant faced in Jordan amounts to serious harm. The Tribunal is not satisfied that there is a real chance that the applicant will face discrimination amounting to persecution for the reason of his Palestinian ethnicity if he were to return to Jordan.
18. Having considered the evidence before it, including the applicant's particular circumstances, the Tribunal is not satisfied that any discrimination faced by the applicant as a Gazan Palestinian would amount to any of the forms of significant harm as set out in s.36(2A).
19. The applicant claims that every time he tried to obtain documents from government departments he was interrogated, questioned, mistreated or had to wait longer than usual because of his Palestinian ethnicity. The applicant has also claimed that in 2003 he was picked up by the police on the false accusation that he had insulted the King. He was questioned, verbally and physically abused and detained for [days]. He claims that this incident occurred because of his Palestinian ethnicity. He also claims that he was questioned and harassed at the airport whenever he travelled out of, or into, Jordan.
20. The Tribunal has found no reliable information in the sources consulted to suggest that stateless Gazan Palestinians in Jordan being subjected to harm generally or when applying for official documents, by Jordanian authorities, the police or intelligence services. As was put to the applicant at the hearing, amongst the many sources cited in the representative's submission [in] July 2013, only a 2008 source is cited as suggesting that Government security operations disproportionately target Palestinians, 'especially operations conducted in the name of fighting terror'.³ This source, dated 2008, in turn, refers to a July 2006 Amnesty International report⁴ that Jordanian security services were more likely to torture detainees if they were Palestinian. Other than the fact that the report by the Minority Rights Group International is far from current, it does not offer any other details or information to clarify to what extent, how and under what circumstances exactly Palestinians were targeted disproportionately. With regard to the 2006 Amnesty International report, which focuses on focuses on the torture and other ill-treatment of political detainees in pre-trial detention by the General Intelligence Department (GID), the document states that methods, likelihood, severity and duration of torture and other ill-treatment meted out on detainees varies according to time and location and may depend on a number of factors, including Palestinian origin. The report briefly observes that 'Palestinian-origin Jordanians are much more likely to suffer'.⁵ The Tribunal is not persuaded that these two reports, either individually or together, corroborate the applicant's claim that he had routinely suffered 'abuse and torture' due to his Palestinian ethnicity or that abuse and torture is the fate of every Palestinian in Jordan.

³ Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Jordan : Palestinians*, 2008, <http://www.refworld.org/docid/49749cfcc.html>.

⁴ Amnesty International 2006, Jordan: "Your confessions are ready for you to sign": Detention and torture of political suspects, <http://www.amnesty.org/en/library/info/MDE16/005/2006>.

⁵ *Ibid*, p13.

21. In his post-hearing submission, the applicant's representative submitted that an absence of corroborating evidence is not necessarily evidence that events in question did not occur. Citing *SZSFK v Minister for Immigration and Anor* [2013] FCCA 7 (16 May 2013), it was submitted that the fact that a diplomatic post is not aware of something does not mean that it did not occur. It was further contended that other potential sources of information on the treatment of Palestinians in Jordan may face significant evidentiary hurdles, including the marginalised situation of Palestinians in general and the Jordanian government's intolerance of dissent. It was submitted that the applicant has provided consistent information regarding his claims for protection and that he should be given the benefit of the doubt with respect to his claims.
22. The applicant's evidence clearly suggests that he is claiming that his claimed experiences in Jordan were the consequence of his Palestinian ethnicity. In the case of Jordan, the US Department of State reports on the human rights situation in Jordan, including the situation of Palestinians in its annual *Country Reports on Human Rights Practices*. In addition, a number of human rights monitoring organisations, including Human Rights Watch and Amnesty International, as well as academics both in Jordan and within the region and media sources regularly report on the prevailing human rights conditions in Jordan and the situation of Palestinians. The Tribunal considers it reasonable to expect that if Palestinians in Jordan, including Gazan Palestinians, were being routinely subjected to questioning, interrogation or mistreatment in the course of applying for official documents; upon entering or exiting the country or at checkpoint upon travelling within the country these matters would have been reported by any of the sources listed above. It is unclear on what basis exactly it is contended that potential sources of information, other than diplomatic sources, on the treatment of Palestinians in Jordan may face significant evidentiary hurdles. The Tribunal acknowledges that there may be some evidentiary difficulties, but it is not satisfied that the flow of information is so tightly controlled that no meaningful information would be available on the (mis)treatment of Palestinians. The absence of any country information to support the applicant's assertions casts doubt on the veracity of his claims. On the basis of the information before it, the Tribunal is not satisfied that the applicant has been subjected to harm or mistreatment for the reason of his Palestinian ethnicity. The Tribunal is not satisfied that there is a real chance that the applicant will face serious harm for the reason of his Palestinian ethnicity if he were to return to Jordan.
23. For the reasons set out above the Tribunal is not satisfied that there is a real risk that the applicant will face significant harm arising from his Palestinian ethnicity in Jordan.
24. The applicant has claimed that in 2006 he was in the company of friends, including [Mr A], whose father is involved with Hamas, when they were approached by the police and taken to the police station. While the police released [Mr A], the applicant and another person were detained and beaten for [days]. At the departmental interview the applicant claimed that because he was with [Mr A] the police thought he was with Hamas and they beat him even more. At the hearing the applicant reiterated that the authorities were interested in his association with [Mr A].
25. In his submission [in] July 2013, the applicant's representative submitted that residents of Jordan who are perceived to oppose the Jordanian regime or to have collaborated with militant groups suffer persecution as a result. It was submitted that individuals who belong to prohibited groups or who are perceived to oppose the regime have suffered mistreatment in the past. The submission acknowledged that while the relationship between Hamas and

Jordan has thawed somewhat in recent past, the applicant's perceived involvement with the group in 2006 may lead him to be perceived as an opponent of the regime.

26. The Tribunal accepts that opponents or perceived opponents of the Jordanian regime are at risk of harm. However, the Tribunal is not prepared to accept that individuals in Jordan who associate or socialise with members of Hamas have attracted harm or attention from Jordanian authorities.⁶ While Jordan closed Hamas offices and expelled its members in 1999, the Tribunal has found no information in the sources consulted to suggest that supporters or perceived supporters of the organisation were subjected to harm or mistreatment in Jordan for the reason of their association or perceived association with the organisation and its members. Again, the Tribunal considers it reasonable to assume that if members or supporters of Hamas were being subjected to any harm or mistreatment by the Jordanian authorities in the past few years, these incidents would have been reported. Indeed, the submissions provided by the applicant's representative were devoid of any references to any information that could suggest that association or perceived association with Hamas and/or its members has attracted harm or mistreatment by the Jordanian authorities.
27. In his post hearing submission, the applicant's representative acknowledged that the sources he had referred to in his submission [in] July 2013 do not generally refer to Palestinians or to perceived supporters of Hamas. It was submitted that these sources nevertheless remain relevant in light of the nature of the applicant's claims and that he will be at risk by virtue of his perceived opposition to the Jordanian government even independent of his Palestinian ethnicity. In the Tribunal's view the absence of any suggestion that supporters or perceived supporters of Hamas, whether Palestinian or Jordanian, were subjected to harm or mistreatment in Jordan casts doubt on the claim that the applicant was subjected to harm for that reason.
28. The country information before the Tribunal suggests that in 2011, *The National*⁷ reported that then Jordanian Prime Minister Awn Khasawneh issued a 'surprise government apology' to Hamas. The 'apology' was regarding the 1999 decision to close Hamas' offices in Jordan and expel its members. The Prime Minister called the decision a constitutional and political mistake'.⁸ Reports from 2012 state that the Jordanian government hosted visits from Hamas leader Khaled Mashaal in both January and July. On 29 January 2012, Mr Mashaal made his first visit to Jordan in more than a decade.⁹ According to *New York Times*, there is 'widespread admiration' for the Hamas leader, and 'Palestinians interviewed in Amman said they were happy he was coming'.¹⁰ Even if the Tribunal were to accept, which it does not, that the applicant was subjected to interrogation, detention and mistreatment in 2006 due to his perceived association with [Mr A], the Tribunal is not satisfied that there is a real chance that the applicant will be subjected to serious harm for the reason of his support or perceived

⁶ Searches were conducted of Jordanian and international news media, major humans rights reports, major foreign government reports, strategic security and intelligence groups, think tanks, peer-reviewed journals, tribunal resources, DIAC resources and general internet searches.

⁷ *The National* is a UAE government-owned English-language daily newspaper published in Abu Dhabi.

⁸ Naylor, H & Ma'ayeh, SP 2011, 'Jordan apology to Hamas baffles many', *The National*, 3 December <http://www.thenational.ae/news/world/middle-east/jordan-apology-to-hamas-baffles-many>.

⁹ Greenberg, J 2012, 'Hamas leader Khaled Meshal visits Jordan's King Abdullah II as relations ease', *Washington Post*, 29 January, http://articles.washingtonpost.com/2012-01-29/world/35438550_1_hamas-officials-hamas-leader-militant-islamist-group; Farrell, S 2012, 'Hamas Leader Takes Rare Trip to Jordan', *New York Times*, 29 January, <http://www.nytimes.com/2012/01/30/world/middleeast/leader-of-hamas-makes-rare-trip-to-jordan.html>

¹⁰ Farrell, S 2012, *ibid*.

support for Hamas or his imputed political opinion as an opponent or perceived opponent of the regime if he were to return to Jordan now or in the reasonable foreseeable future. On the basis of the information before it, the Tribunal is not satisfied that the applicant's Palestinian ethnicity puts him at a greater risk of harm as a result of his association with [Mr A].

29. For the above reasons the Tribunal is not satisfied that there is a real risk that the applicant will face significant harm arising from his express or imputed political opinion in Jordan. The Tribunal is not satisfied that the risk that the applicant will face significant harm is exacerbated by his Palestinian ethnicity.
30. After considering all of the applicant's claims, both individually and cumulatively, the Tribunal is not satisfied that the applicant has been harmed in the past or that, if he were to return to Jordan now or in the reasonably foreseeable future, there is a real chance that he will be harmed for the reason of his race, nationality, political opinion or membership of any particular social group, including stateless Palestinians in Jordan or any other Convention reason. The Tribunal is not satisfied that the applicant's fear of persecution is well-founded.
31. Concerning complementary protection, the Tribunal is not satisfied 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 he will be arbitrarily deprived of his life, that the death penalty will be carried out on him, that he will be subjected to torture, that he will be subjected to cruel or inhuman treatment or punishment or that he will be subjected to degrading treatment or punishment as defined. The Tribunal, therefore, is not satisfied 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 he will suffer significant harm as defined in subsection 36(2A) of the Act.
32. 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).
33. 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).
34. 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

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

Shahyar Roushan
Senior Member