

0805551 [2009] RRTA 24 (15 January 2009)

DECISION RECORD

RRT CASE NUMBER: 0805551

COUNTRY OF REFERENCE: United Arab Emirates/Jordan

TRIBUNAL MEMBER: Shahyar Roushan

DATE: 15 January 2009

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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 and Citizenship 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 stateless and formerly resident in Palestinian Territories, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to 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. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
21. The applicant was represented in relation to the review by his registered migration agent.

Application for a Protection Visa

22. According to his application for a protection visa, the applicant is a Palestinian born in the United Arab Emirates (UAE). He lived in Jordan for several years and then in the UAE until his arrival in Australia. While he lived in Jordan, he studied in institutions facilitated by an aid agency. He worked in the UAE for many years.
23. He has relatives in several other countries.
24. The applicant travelled to Australia on a "temporary" Jordanian passport issued in City C, UAE. The applicant's visa to Australia was issued in City D, UAE.
25. In response to questions relating to his reasons for claiming to be a refugee, the applicant stated that he was born a refugee because his parents are Palestinian refugees and he has no "homeland" to live in. He left Jordan because he has "no work rights or any other rights" in that country because he is not a Jordanian citizen and his stay in Jordan was temporary.
26. In a letter accompanying the application form, the applicant's representative stated that the applicant arrived in Australia on a temporary visa. After his arrival he was informed that the company he was working for in the UAE was closing down. Accordingly, he is unable to return to his job in the UAE. The applicant is also unable to return to the Palestinian Territories as he does not have the right of return. The only country he can go back to is Jordan. However, as a Palestinian refugee, he has no rights in Jordan, including the right to work or the right to own a motor vehicle. The applicant does not have a national ID number which is required if he were to work in Jordan. It was stated that the applicant will be discriminated against in Jordan because of his nationality and will be "deprived of his livelihood"

27. In support of his application form, the applicant submitted a copy of a letter from an aid agency in Jordan certifying that he is registered with them

Departmental Interview

28. The applicant was interviewed by the delegate. Before the interview the applicant submitted a letter from his employer in the UAE confirming the date that he had commenced employment with the agency, and the position that he held. According to the letter he was made “redundant” and his employment concluded soon after he arrived in Australia.
29. The Tribunal has listened to the audio recording of the interview and what follows is a summary of the evidence given by the applicant at the interview.
30. He was born and studied in the UAE and Jordan. He can use his current passport to re-enter Jordan [Information about the applicant’s migration history deleted in accordance with s.431 as it may identify the applicant] Before migrating to the UAE his parents had lived in Jordan as Palestinian refugees.
31. The applicant stated that he is fearful of returning to Jordan because he has no rights there. He has no rights in Jordan and is treated like a visitor. He has no right to own property, to work, to study or to obtain a driver’s licence. When his father returned to Jordan from the UAE, he could not buy a house and could not run a business. The delegate asked him how he did not have the right to study if he had studied in Jordan. He said he studied in institutions facilitated by an aid agency. Otherwise he would not have been able to work.
32. The delegate put to him that Palestinian refugees with temporary passports are able to work in the private sector. He said without a driver’s licence, he would be unable to drive a taxi or do any other work that would require driving. He has no ID and has to carry his passport with him all the time. It was put to him that Palestinians are able to apply for membership of professional associations. He said with his passport he would be unable to find any kind of work for the government or even in the private sector. Some Palestinians in Jordan have citizenship and they are treated differently. They are able to work and hold membership of professional associations. He was asked how Palestinian refugees in Jordan are able to live. He said they just survive on a day to day basis because they have no choice. They really suffer and do not receive any kind of income support. They only have the right to study for two years.

Application for Review

33. In a brief submission in support of the application for review, the applicant’s representative again stressed that as non-citizens of Jordan, Palestinian refugees are denied the right to work, the right to send their children to government schools for free, the right to free medical treatment and the right to own property.

The Hearing

34. The applicant stated that he was born in UAE to Palestinian parents. [Information about the applicant’s migration and family history deleted in accordance with s.431 as it may identify the applicant.] The applicant took the opportunity to study at an educational

facility provided by an aid agency. His relative found him a job at a company in the UAE. The applicant was subsequently sponsored by this company and returned to the UAE. He remained in the UAE until he came to Australia. The applicant added that the UAE has passed new laws to the effect that Palestinians and Iraqis, in particular those holding travel documents, are no longer allowed to be sponsored by employers.

35. The applicant is the second youngest child He has siblings in several other countries. He also has two other siblings living in the Palestinian Territories who he has never met.
36. The applicant stated that he is unable to return to the UAE and did not want to live in Jordan because he has no rights in that country. There is no work in Jordan and he might starve. He only has the right to stay in Jordan and nothing else. The Tribunal noted that there are about 150,000 Palestinian refugees who live in Jordan and asked him how they survive. He said none of them work. Rather, they rely on assistance from relatives living abroad.
37. The Tribunal asked him what other rights are denied to him. He said he is not allowed to obtain a driver's license, own a shop or work. He stated that he has no national ID and explained that if he ventured out after 11 pm he would be detained by the authorities overnight.
38. The Tribunal put to him that the sources it has consulted suggest that Palestinian refugees have the right to work in the private sector. He said private companies give preference to Jordanian citizens and refuse to employ Palestinians, unless it is out of pity. His status in Jordan means that it would be very difficult for him to get married because he has no future prospects.
39. The Tribunal noted that he is entitled to receive assistance from the aid agency. He said the aid agency provides refugees with flour, sugar and soap on a monthly basis.
40. The Tribunal noted that he has claimed that Palestinian refugees are denied the right to send their children to government schools for free and the right to free medical treatment. He said education is provided through the aid agency, but he has to pay a fee to access medical treatment.
41. The Tribunal acknowledged that Palestinian refugees experience discrimination in Jordan. However, it was put to the applicant that discrimination does not always rise to the level of persecution. The applicant stated that in Jordan he has to carry his passport with him at all times, otherwise he could be detained. None of his siblings live in Jordan, because life is too difficult there. If he had the opportunity to work in Jordan he would have stayed with his parents who live there on their own. If his siblings did not financially support his parents, they would die.
42. The applicant added that his life depended on the outcome of his application for a protection visa. He said that his passport has expired and the Jordanian Embassy in Australia has refused to renew his passport and they asked him about his status in Australia. The applicant said that he did not know the exact reason behind the Embassy's refusal to renew his passport.

FINDINGS AND REASONS

43. The applicant's claims are based on the Convention grounds of race, nationality and membership of a particular social group. He essentially claims to have been born to Palestinian parents. The applicant claims to be fearful of living in Jordan because Palestinian refugees who hold two-year temporary passports do not have the right to work, obtain driver's licenses, own property or access free medical care. He claims that he has no national ID and would have to carry his passport with him at all times, otherwise he would be detained. The applicant claims that he cannot return to the UAE because he does not have a visa and the country has passed new laws preventing those holding travel documents from entering the country on work visas. The applicant also claims that the Jordanian Embassy in Australia has refused to renew his expired temporary passport.
44. At the hearing, the applicant provided his evidence in an unblemished manner entirely consistent with his written claims. The Tribunal found him to be a credible and truthful witness.
45. The applicant submitted copy of a letter from the aid agency in Jordan certifying that he is registered with the agency. The Tribunal, therefore, is satisfied that the applicant is registered with the aid agency and falls within the terms of the first paragraph of Article 1D. The Tribunal, based on the factual information before it, finds that 'protection' was only provided by the United Nations Conciliation Commission for Palestine (UNCCP) and that protection has now ceased. Accordingly, the applicant is not excluded from the operation of the Convention under Article 1D. That said, the applicant will not automatically be deemed a "refugee" under the Convention and his case must be assessed against Article 1A(2).
46. The applicant travelled to Australia on temporary Jordanian passport issued to Palestinian refugees. Being a holder of a Jordanian Passport does not necessarily make the applicant a Jordanian citizen. Palestinian refugees displaced to Jordan 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 on the Biographical Data page and are known as "T" series because the passport No is prefixed with a "T" (see Department of Foreign Affairs and Trade, Jordanian passports and Palestinians, Country Information Report, CIR No.298/01, 28 November 2001, CX59868). The applicant's passport does not include a National Identification Number and the Passport No is prefixed with a "T". The Tribunal finds that the applicant is not a Jordanian citizen.
47. 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"

The Tribunal accepts that the applicant's parents are Palestinian refugees who left for Jordan. The applicant never lived in the Palestinian Territories and although he has two older siblings who reside there, being the second youngest, he has never met them. The evidence before the Tribunal clearly indicates that the applicant has no other connections to the place apart from his familial links and cultural heritage. On the evidence before it, the Tribunal is not satisfied

that the Occupied Palestinian Territories could be considered the applicant's country of former habitual residence.

48. The Tribunal accepts that in the applicant's family moved to the UAE, where the applicant was born. He lived and studied in the UAE for many years and then moved back to Jordan. The Tribunal accepts that as soon as an opportunity presented itself, the applicant returned to the UAE where he lived and worked until he came to Australia. The Tribunal further accepts that one of his siblings continues to reside in the UAE. The evidence before the Tribunal suggests that the applicant had made or at least regarded the UAE his 'abode' or 'the centre of his interest' and had every intention to continue to reside in that country. Therefore, it could be said that the applicant's country of former habitual residence is the UAE.
49. The Tribunal, however, accepts that the applicant's circumstances changed when his employer in the UAE terminated his employment after he arrived in Australia. The Tribunal accepts that the termination of the applicant's employment directly impacted on his visa status in the UAE and his ability to return to that country.
50. According to the Immigration and Refugee Board of Canada, residence permits in the UAE are issued through "employment or family sponsorship" on a temporary basis.

UAE permits issued via employment sponsorship are issued to individuals who have been sponsored by a local company for employment purposes. Such individuals can reside and work in the UAE for a specified period of time, and, through family sponsorship, can sponsor members of their family to obtain residence permits. However, persons who acquire residence permits via family sponsorship are only able to reside in the country and are not permitted to work...

A residence permit of an employed individual (acquired via employment sponsorship) and those of his or her family members (acquired via family sponsorship) are cancelled when the individual's employment in the country comes to an end (Immigration and Refugee Board of Canada, 2004, ARE42484.E, *United Arab Emirates: The rights and privileges accorded to the holder of a United Arab Emirates residence permit, including whether a residence permit holder has the right to re-entry, and to reside and earn a living in the country*, 3 March).
51. The Tribunal accepts that the applicant's residence permit was cancelled as soon as his employment came to an end. The Tribunal further accepts that the UAE government changed the laws relating to immigration visas in July 2008, effectively making it harder for the nationals of certain countries to enter the UAE on a visit visa to search for work" (Al Jandaly, B. 2008, 'Palestinian faces month's stay in airport to get visa', *Gulf News*, 26 September http://www.gulfnews.com/nation/Immigration_and_Visas/10247969.html; Morris, L. & Khalaf, H. 2008, 'Confusion surrounds visa rules', *The National*, 30 September <http://www.thenational.ae/article/20080929/NATIONAL/642285029/0/FRONTPAGE>; Habboush, M. 2008, 'Visa rules burden job seekers, say expats', *The National*, 31 July <http://www.thenational.ae/article/20080730/NATIONAL/399145196/0/FRONTPAGE>). These sources also suggest that Palestinians may have been directly impacted by these laws, as claimed by the applicant. On the basis of the evidence before it, The Tribunal is satisfied that the applicant does not have the right to re-enter the UAE.
52. The applicant has made no claims against the UAE and the Tribunal is of the view that his inability to return to that country, as a country of former habitual residence, does not

amount to persecution. On the basis of the evidence before it, the Tribunal is satisfied that the applicant does not have a well-founded fear of persecution in relation to the UAE.

53. It is generally accepted that a stateless person may have more than one country of former habitual residence. As previously noted the applicant is a holder of a temporary Jordanian Passport. He lived in Jordan for several years. He is registered with an aid agency in Jordan and completed a course at one of aid agency's educational facilities before returning to the UAE. Jordan is arguably a country of former habitual residence for the applicant and the Tribunal has considered his ability to return to that country.
54. Having sighted the applicant's passport at the hearing, the Tribunal is satisfied that his passport has expired. The applicant has claimed that the Jordanian Embassy in Australia has refused to renew his passport. Whilst the Tribunal was unable to locate specific information suggesting that the Jordanian Embassy in Australia has taken this action; sources suggest that renewing temporary travel documents can be problematic for Palestinians.
55. [Country information deleted in accordance with s.431 as it may identify the applicant]
56. It is well established that refugee status will not be accorded to persons merely because they are stateless and unable to return to their country of former habitual residence. That said, the Jordanian government's refusal to renew the applicant's passport is amongst a long list of discriminatory treatments it subjects Palestinian refugees to.
57. The applicant's claims relating to the situation of Palestinian refugees in Jordan are generally supported by the country information before the Tribunal. Although Palestinian refugees are provided with relief, health and education services by an aid agency, their lack of citizenship translates into several legal restrictions that limit their rights and contribute to their vulnerable living conditions. Accordingly, they face severe discrimination with regard to employment.
58. [Country information deleted in accordance with s.431 as it may identify the applicant.]
59. In addition, Palestinian refugees are barred from practicing several professions; experience difficulties in obtaining licenses for establishing private businesses; are not allowed to become members in cooperative associations which could enable them to establish an income generating project; experience difficulties in getting employed by private banks as they are rarely granted the requested security clearance; are not allowed to obtain public drivers license; and are excluded from the training and employment programmes launched by the government to decrease unemployment rates in the country and equip young people with the skills and experience that will pave their road and enhance their access to the labour market. Furthermore, access to domestic employment by larger companies may be denied, as national Intelligence may not grant the required approval (Thweib, M, *ibid*).
60. The Tribunal is of the opinion that the restrictions and the discriminatory measures adopted by Jordan would cause the applicant significant economic hardship threatening his capacity to subsist. The Tribunal is satisfied that the restrictions would deny the applicant access to basic services and the capacity to earn a livelihood. The Tribunal is satisfied that the denial referred to would threaten the applicant's capacity to subsist.

The Tribunal considers this treatment to amount to “serious harm” as required by paragraph 91R(1)(b) of the Act. The Tribunal is satisfied that the reason for the persecution in question is essentially and significantly the applicant’s Palestinian ethnicity. The Tribunal is satisfied that the applicant does not have adequate and effective state protection available to him. The Tribunal, therefore, is satisfied that the applicant has a well-founded fear of persecution for a Convention reason in Jordan

61. The Tribunal has found that the UAE is a country of former habitual residence and that the applicant does not have a well-founded fear of persecution in relation to that country. However, the Tribunal is satisfied that the applicant does not have a right to enter and reside in the UAE or any other country. The Tribunal finds that the applicant is not excluded from Australia’s protection by s.36(3) of the Act.

CONCLUSIONS

62. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

DECISION

63. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.

Sealing Officers ID: PRRTIR