1202217 [2012] RRTA 639 (20 July 2012)

DECISION RECORD

RRT CASE NUMBER:	1202217
DIAC REFERENCE(S):	CLF2011/135965
COUNTRY OF REFERENCE:	Jordan
TRIBUNAL MEMBER:	Diane Barnetson
DATE:	20 July 2012
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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 on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] August 2011.

3. The delegate refused to grant the visa [in] January 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. 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. 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 to whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. 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 to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.

6. 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.

7. 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, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. 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.

9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

10. 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.

11. 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.

12. 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: s91R(1)(a) of the Act.

13. 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 being persecuted 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.

14. 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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution. 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.

Complementary protection criterion

15. 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 to 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').

16. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.

17. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

18. 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.

19. The applicant appeared before the Tribunal [in] May 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.

Protection visa application

20. In the protection visa application, the applicant indicated that he was a citizen of Jordan, born in Amman on [date deleted: s.431(2)]. He is a Sunni Muslim. He has never married. His military obligations have been delayed. He arrived in Australia [in] July 2011 on a visitor visa issued [in] July 2011, valid to [August] 2011.

21. He lived at the same address in Jordan from 2001 to the present time and had travelled to [a number of different countries] on several occasions for holidays between 2006 and 2009.

22. The applicant was educated at [primary and high school] and then at [university] obtaining a Bachelor [degree] in [2010]. He worked [in various managerial roles] before arriving in Australia.

23. The applicant applied for a student visa in 1999.

24. One of the applicant's brothers lives in Australia. His parents and five of his [siblings] live in Jordan; his [remaining siblings live in other countries]. The applicant provided a copy of his passport with the application.

25. In a written statement provided with the application, the applicant's representative wrote that the applicant was Palestinian by ethnic origins. His grandparents were forced to go to Jordan in the 1940's. He comes from a large family and they have been discriminated against by the Jordanian regime which treats them as second class citizens. The family situation is exacerbated by the fact that three of the applicant's Palestinian cousins, who reside at [Village 1], are supporters of Hamas. The applicant's family is perceived guilty by association because of their relationship with these cousins. The cousins are constantly being incarcerated by Israeli authorities and spend months in prison. This is known to the Jordanian authorities and the family is monitored constantly.

26. After leaving high school in [year deleted under s.431(2)] the applicant attempted to gain entry to university. He failed to do so and applied for a student visa to Australia in 2000. This was refused. The applicant then applied for entry to a private university and was accepted for a [degree] from [2005]. This confirmed his suspicion that the government had adverse information about him and had found him guilty by association with his cousins and so prevented him applying for a public education in Jordan or abroad.

27. The discrimination and ostracisation [sic] the applicant faced escalated at university. It was not "official' and the university turned a blind eye to it.

28. In summer 2009, the applicant had to complete a unit called [name deleted under s.431(2)] when a Lieutenant took classes for 2 months. This person made derogatory remarks about Palestinians which the applicant took issue with and replied to**.** He was cautioned many times about this.

29. The applicant's father bought a [cafe] and the applicant went to work for him from 2002 to 2010. When at work he would speak up against the discrimination he faced and these things that he said would be considered treason and sedition and would be punished severely. The applicant realised that intelligence agents were following him around and they interrogated him on three occasions. Several times he saw them patrolling around his parent's home. They also loitered at the [cafe].

30. The applicant then made arrangements to leave the country as soon as he could and the quickest way was to apply for a tourist visa.

31. The applicant fears for his life and he is afraid that if he is made to return to Jordan he will be punished for his actions. The fact that he sought asylum in Australia would confirm in their eyes that he is a traitor and involved in suspicious activity which made him flee Jordan. The applicant's family have told him that suspicious individuals have

been asking about his whereabouts and his family have told him not to return as he will face terrible consequences. They have told him horror stories about people who have been pursued by the intelligence and their fatal ends.

32. The applicant has been very vocal in condemning the discrimination and hostility he faced in Jordan on his arrival in Australia. He was warned by his family not to do so but he feels it is his right to speak out as he has been severely wronged.

33. The representative indicated that further details would be provided.

34. Information on the Department file indicates that [in] May 2010 the applicant applied for a 3 month visitor visa. He indicated that he was an [Occupation 2] at [Company 3]. There was no evidence of any property or other assets in Jordan. There was no history of overseas travel. There were no dependent family members in Jordan; the applicant was single. The application was refused.

35. [In] February 2011 he applied again for a visitor visa. In that he indicated that he had been an [Occupation 2] at [Company 3] for 5 years and 8 months. . He provided letter stating he had been employed since 2006. A phone check with the employer confirmed that the employment was genuine.

36. The applicant also claimed at interview that he was detained in 2004, 2007 and 2009.

Independent information

Very little information is available which would suggest that Jordanian citizens of Palestinian origin have, as a specific group, been subject to any serious mistreatment over recent years in terms of suffering physical harm or imprisonment. Reports have appeared in which some commentators have expressed concerns about the extent to which Palestinians are said to be under-represented within the Jordanian government and by the Jordanian electoral system. There have also been reports that "Jordanians of Palestinian descent face discrimination in employment by the government and the military, and in admission to universities" Beyond this, however, the recent annual reports of human rights commentators like Amnesty International and Freedom House have not expressed any concerns about the situation of Jordan's Palestinian citizens.

Hearing

37. At the hearing, the Tribunal took the applicant through his protection visa application. He confirmed that the details in that were accurate. He said that he got his first passport in 1999; the second in 2004, then the last one which he had submitted. He said that he had problems getting the passports. As a Palestinian the authorities check whether he had a yellow or green card and then you apply for the passport. This is standard for all. The applicant did not have either a green or yellow card because his father never went back to Palestine.

38. He has travelled to [a number of different countries], for shopping and for a break. He went with his brother and some friends. He has lived at the same address at his family home in Amman all his life.

39. He obtained his degree in Jordan from 2005 to 2010. He did not get into university when he left school so he worked for a while before going to university. He studied at

night and worked during the day. He worked at a fruit and vegetable shop and before that at his father's coffee shop. In 1999 he worked at a [business deleted under s.431(2)] for a year. These are his only jobs.

40. The applicant said that his parents were still alive and lived in Amman. His father did not work now but had owned the coffee shop and worked in [a retail shop] too, until 1996. He has [family unit description deleted: s.431(2)].

41. He said that his brothers [employment details of family members deleted: s.431(2)]. The applicant confirmed that he had two brothers who are Australian citizens, but only one lives in Australia. The other one lives in [another country].

42. The applicant applied for a student visa in 1999-2000 which was refused and in 2010 a visitor visa was refused. He applied as a student because he did not get into university and his brother was here. He is not sure why the student visa was refused. The visitor visa was refused because he had not travelled except to [two countries].

43. The Tribunal asked why he feared returning to Jordan. He said that Jordan knows he has applied for protection now because everyone here knows, like his friends. His family told him that the police came and asked about him in Jordan in October 2011 and in March 2012. They asked where he is, and said that they know he had applied for protection. They said he should not return to Jordan because he would be in so much trouble.

44. In Australia, the applicant speaks against the regime in Jordan. They know he has done this otherwise why would they come looking for him? The Tribunal asked for the reason he came to Australia this time, on a visitor visa. He said it was to get out of Jordan; and so that he could apply for protection. He wanted to get out because of the discrimination. He was asked for an example. He said that he had a problem in summer, June or July, 2009. He was studying [subject deleted under s.431(2)] and he challenged the lecturer. The lecturer became upset and called someone. A car came and took him to the intelligence office for three days. He was beaten and abused verbally. He was deprived of food. He was questioned. He was told not to comment on the lectures another time. His family had him released. He returned to university after that, as he only had one semester left to finish. He also continued with the military history subject, as it was compulsory. He did not have any further issues with the lecturers, but he faced discrimination. He had to repeat two subjects, but a Jordanian would not have had to repeat. He finished his study in February 2010.

45. The Tribunal asked whether he had suffered any other harm or adversity in Jordan. He said that in 2007 there was a soccer game between Jordanian and Palestinian teams. There was a fight afterwards and security forces took them to the police station. They were verbally abused and they were kept at the police station for two days. His family had to bail him out.

46. In 2004 the applicant was at the coffee shop with his father and there was a problem between a Palestinian worker and a Jordanian about the bill. He reported the worker as stepping on the Kings' picture and they were all taken to the police station. They were questioned and then left. The worker had to go to Court and the applicant had to give evidence. The Palestinian was found guilty because they believed the Jordanian.

47. The Tribunal asked for details of his activities in Australia. He said that he has spoken against discrimination in Jordan and told about what happened to him. He spoke to his friends and his brother's friends.

48. The applicant said that he did not get into university after school, although Jordanians with the same qualifications did get in. He applied for jobs and did not get them. His brothers studied at government universities but there is a difference in the way they have to study.

49. The applicant referred to his passport which showed that he had applied for protection in Australia. The Tribunal clarified that he meant the bridging visa and then explained that this type of visa was not specific to protection applications and does not indicate that the person has applied for protection.

50. The Tribunal raised with the applicant several issues in relation to his claims. It explained that the information could lead to an adverse assessment of his credibility and to an adverse finding in relation to his claims

51. The Tribunal indicated that the applicant gave evidence at the hearing that he worked in [a number of jobs, as well as his] father's café In his application he wrote that he was [Occupation 2] with [Company 3] from 2007 to 2011, when he left Jordan. The Tribunal explained that this discrepancy in his evidence may lead to the Tribunal concluding that the applicant was not a credible witness and this may lead to a conclusion that his claims are not genuine.

52. The applicant said he mentioned at the first interview that he did not work for the company but when he applied to come to Australia he had to show he had a job and he got the paperwork from a big company in Jordan. Then when he applied for protection his agent asked what he put in his first application and put that on this application. The Tribunal clarified that he obtained a false document in relation to his employment when he applied for his visitor visa. It then asked why, if he needed such information for his visitor visa, he would repeat the information when it was not relevant to his claims. He said that his agent asked him what he did in Jordan and because of this letter being with the Department he knew they had the letter.

53. The Tribunal indicated that the records in the Department file showed that the delegate who was considering his visitor visa application wanted to verify the information he gave about his employment with [Company 3] directly. The delegate therefore contacted [Company 3] who confirmed the applicant's employment. This appeared to contradict the information he had now given, that he did not work for this company at all. The Tribunal explained that this may lead to a conclusion that the applicant was not a credible witness; and that his claims of discrimination in Jordan are not genuine as he has worked there in a secure employment for a number of years.

54. This information was put to the applicant under the provisions of 424AA of the Migration Act in accordance with the prescriptive directions of that provision. The applicant was given an opportunity to orally respond to information that the Tribunal considered would be the reason for affirming the decision under review. The applicant was further given an opportunity for additional time to provide further response to the Tribunal. The applicant elected to respond orally at the hearing.

55. He said that when he applied for a visitor visa he wanted to show he had a good job; working with his father would not be enough. The Tribunal reiterated that the company had confirmed his employment to the delegate. The applicant said that he asked them for the letter so he could get the visa. The Tribunal asked why a company would provide false information to the Australian government for him. He said that the person who worked there is a friend. The agent said he had to put the same information on the protection visa as he put on the visitor visa application.

56. The Tribunal also raised with the applicant that the record in relation to the visitor visa applicant showed that the applicant had a bank account with a balance of $US12,500.00. This raised the issue as to how someone who worked in a café and [other retail work] was able to raise this money between leaving school in 1999 and the application in 2011. This information was put to the applicant under the provisions of 424AA of the Migration Act in accordance with the prescriptive directions of that provision. The applicant was given an opportunity to orally respond to information that the Tribunal considered would be the reason for affirming the decision under review. The applicant was further given an opportunity for additional time to provide further response to the Tribunal. The applicant elected to respond orally at the hearing.

57. The applicant said that he had some money and borrowed more from family and friends.

58. The Tribunal raised with the applicant that, according to his protection visa application, he had applied for a student visa in Australia in 1999, which is before the incidents, including detentions and interrogations, occurred. This could lead the Tribunal to conclude that the applicant had wanted to travel to Australia as long ago as 1999 and that the protection application was simply another attempt to achieve this aim. The applicant said that in 2002 and 2007 he applied for a visa for the West Bank but did not get this, so it was not only to Australia that he applied. He gave copies of his passports at the interviews.

59. The Tribunal raised that the applicant got his visitor visa [in] April 2011. He arrived in Australia [in] July 2011, which is almost three months later. This delay could lead to a conclusion that there was a lack of urgency in leaving Jordan. This may lead to a conclusion that the applicant was not facing any serious threat or harm in Jordan. This may lead to a conclusion that the claims for protection were not genuine.

60. The applicant said that his parents did not want him to leave. They wanted him to delay leaving. In the end he got a ticket, packed his bags and left.

61. The Tribunal raised that, in the statement his agent provided with his protection visa application, it was indicated that one of the applicant's concerns was a possible perception of his having an adverse political opinion because of the activities of his Palestinian cousins. These cousins are supporters of Hamas and were incarcerated by Israelis; this is known to the Jordanian authorities. The family is constantly being monitored because of this.

62. However, the applicant did not mention this claim in his evidence to the Tribunal, despite being specifically asked whether there was anything else he wanted to raise. This omission could lead to a conclusion that the claim is not genuine, as it is a significant claim which the applicant failed to include in his evidence to the Tribunal.

The applicant said that he wanted to raise this and was waiting for the Tribunal to ask him about it.

63. The Tribunal also raised with the applicant that in the statement by his agent, he said that there were intelligence agents who were following the applicant and interrogated him on three occasions. In his interview he mentioned three dates when he claims he was in fact detained, as he claimed at the Tribunal hearing; he claimed to have been detained and ill-treated. The change in the evidence, from "interrogation" without details and the later information that there was ill-treatment and harm may lead to a conclusion that the claim is not true and has been made to strengthen his claims for protection. This may lead to the Tribunal affirm the Department decision. This information was put to the applicant under the provisions of 424AA of the Migration Act in accordance with the prescriptive directions of that provision. The applicant was given an opportunity to orally respond to information that the Tribunal considered would be the reason for affirming the decision under review. The applicant was further given an opportunity for additional time to provide further response to the Tribunal. The applicant elected to respond orally at the hearing.

64. The applicant said he told the agent about the three incidents and he said he would include them in a letter and also that the applicant would have a chance to explain in more detail at an interview.

65. The Tribunal raised with the applicant that in the same statement the agent mentioned his being followed around; he saw intelligence agents them patrolling around his parent's home and they frequented the cafeteria where he worked and he was being pursued by them. He omitted these claims in his evidence at the hearing. The omission may lead the Tribunal to conclude that the claims are not genuine, as they are significant claims which the applicant failed to include in his evidence to the Tribunal.

66. The applicant said that his coffee shop is run by Palestinians. Police in civilian clothes would come to the café They would monitor the café. Since the incident with the Palestinian worker and after what happened at the soccer game and at university there have been many visitors and the applicant felt that they were at the house.

67. The Tribunal raised the independent information regarding Palestinians in Jordan, noted above. These indicate that, while there are some adverse issues for Palestinians in Jordan, commentators, including Amnesty International, have not expressed any concerns about the human rights situation for Palestinians in Jordan. This may indicate that, while there are difficulties, these are not major or of serious concern to these organisations. This may lead the Tribunal to conclude that if he returned to Jordan he may suffer some adverse effects, but this would not amount to the degree of serious harm in the definition of a refugee.

68. The applicant said that he had mentioned that they had asked about him in October and March and they said that he should not go back because they know he has applied for protection. He has tried to get evidence of this but cannot get any from the authorities.

69. The stamps in the applicant's visa show he has travelled outside Jordan several times and has been issued with three passports. He was able to obtain his visa to Australia and then leave Jordan. This could lead to the conclusion that he is not of interest to the

Jordanian authorities and that his claims to be at risk from the Jordanian authorities are not genuine.

70. The applicant said that they had asked his family about him but he cannot get any documents about this; the regime would not give any such documents.

71. The Tribunal explained the provisions of the legislation by which it is generally accepted that a person can acquire refugee status *sur place* where he or she has a well-founded fear of persecution as a consequence of events that have happened since he or she left his or her country. It explained that any conduct engaged in by the applicant in Australia must be disregarded in determining whether he or she has a well-founded fear of being persecuted for one or more of the Convention reasons unless the applicant satisfies the decision maker that he or she engaged in the conduct otherwise than for the purpose of strengthening his or her claim to be a refugee within the meaning of the Convention.

72. The applicant responded that he told friends what happened to him in Jordan and the authorities have learned of this. The Tribunal explained that it had to be satisfied that the applicant did not engage in this conduct simply to strengthen his claims for protection. He said that he would tell people about the discrimination in Jordan. He would tell anyone who asked about the situation in Jordan.

73. The Tribunal explained to the applicant about the complementary protection provisions of the legislation and asked the applicant whether he had anything he wanted to say on this matter. He said that he would be tortured and suffer degrading treatment. He could not get a job and would not get another passport. He has lived for thirty years in Jordan and only a few months in Australia and it is like a 360 degree change.

74. The Tribal asked whether his Australian brothers had returned to Jordan; he said that they had on occasion.

FINDINGS AND REASONS

75. The Tribunal accepts, on the evidence before the Tribunal that the applicant is a citizen of Jordan. He is outside that country at this time.

76. The Tribunal is required to determine whether the applicant has a well-founded fear of persecution in Jordan and, if so, whether this is for one or more of the convention reasons. When determining whether an applicant is entitled to protection in Australia, a decision-maker must first make findings of fact on the claims he or she has made. This may involve an assessment of the applicant's credibility. When assessing credibility, it is important to be sensitive to the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are genuinely credible but unable to substantiate all of their claims. That said, the Tribunal is not required to accept uncritically any or all allegations made by the applicant. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. Indeed the Tribunal is not obliged to accept claims that are inconsistent with independent evidence regarding the situation in the applicant's country of nationality. *Randhawa v Milgea (1994) 52.FCR.437 at 451, per Beaumont J, Selvadurai v MIEA and ANOR (1994) 34.ALD.347 at 348 per Heerey J and Kopalapilli v MIMA (1998) 86.FCR.547.*

77. The Tribunal is required to make a determination as to whether the applicant has a well-founded fear of persecution for a convention-related reason if he were to return to Jordan.

78. The Tribunal has taken into consideration the evidence that the applicant has provided to the Department of Immigration that formed the applicant's claims for protection, along with the material submitted to the Tribunal at review.

Credibility of the applicant

79. As indicated to the applicant at the hearing, the Tribunal had concerns in relation to his credibility.

Contradictions and omissions

80. The applicant gave evidence at the hearing that he worked in [a variety of retail work] and his father's [business]. In his protection visa application he wrote that he was [Occupation 2] with [Company 3] from 2007 to 2011, when he left Jordan.

81. The Tribunal accepts that a person may provide false information and documents in order to enter Australia and then apply for protection with genuine claims. However, in the present case, the information regarding employment was repeated in the protection visa application. The Tribunal considered the applicant's response, that he mentioned at the first interview that he did not work for the company but when he applied to come to Australia he had to show he had a job and he got the paperwork from a big company in Jordan. Then when he applied for protection his agent asked what he put in his first application and put that on this application. However, there is no reason for providing false information at this stage; in fact it could be detrimental to the claims regarding the applicant's situation in Jordan.

82. Further, the claim about employment was independently verified by a Department officer. The Tribunal has considered the applicant's response, that he obtained a false employment document when he applied for a visitor visa; he did not work for this company and the person who worked there is a friend. However, the Tribunal is of the view that the applicant's response does not adequately explain the fact that the delegate verified the information with the employer.

83. The discrepancy in the applicant's evidence regarding his employment, in his application and at the hearing, leads to the Tribunal to the view that the applicant is not a credible witness.

84. In the statement the applicant's agent provided with his protection visa application, it was indicated that one of the applicant's concerns was a possible perception of his having an adverse political opinion because of the activities of his Palestinian cousins. These cousins are supporter of Hamas and were incarcerated by Israelis and this is known to the Jordanian authorities and the family is constantly being monitored because of this.

85. However, the applicant did not mention this claim in his evidence to the Tribunal. The Tribunal has considered the applicant's response, that he wanted to raise this and was waiting for the Tribunal to ask him about it. However, the Tribunal specifically asked

whether there was anything else he wanted to raise and he did not raise this claim. However, the Tribunal is of the view that the applicant had an opportunity to mention this claim at the hearing and was asked for any further information but failed to mention this claim. This leads the Tribunal to the view that the applicant is not a reliable or credible witness, as he would otherwise raise any significant claims at the hearing.

86. In the statement by his agent, it was stated that there were intelligence agents who were following the applicant and interrogated him on three occasions. In his interview he mentioned three dates when he claims he was in fact detained, as he claimed at the Tribunal hearing; he claimed to have been detained and ill-treated. There is a change in the evidence, from "interrogation" without details to ill-treatment and harm. The Tribunal considered the applicant's response, that he told the agent about the three incidents and he said he would include them in a letter and also that the applicant would have a chance to explain in more detail at an interview. However, there is a significant change in the nature of the claims, not simply in the additional detail; from interrogation to detention and ill-treatment. The Tribunal is of the view that this change in the applicant's claims leads to the view that he is not a credible witness.

87. In the statement from the agent it was said that intelligence agents who followed him around; he saw intelligence agents patrolling around his parent's home and they frequented the cafeteria where he worked and he was being pursued by them. He omitted these claims from his evidence at the hearing. The Tribunal considered the applicant's response, that his coffee shop is run by Palestinians. Police in civilian clothes would come to the café. They would monitor the café Since the incident with the Palestinian worker and after what happened at the soccer game and at university there have been many visitors and the applicant felt that they were at the house. However, the Tribunal is of the view that this does not explain the omission of this significant claim in the applicant's evidence at the hearing. The omission leads the Tribunal to the view that the applicant is not a credible or reliable witness.

Delay in applying for protection

88. The applicant was granted his visitor visa [in] April 2011. He arrived in Australia [in] July 2011, which is almost three months later. When asked to explain the delay, the applicant said that his parents did not want him to leave. They wanted him to delay leaving. In the end he got a ticket, packed his bags and left. The Tribunal is of the view that the delay in leaving indicates a lack of urgency in the applicant's situation in Jordan and that he did not face harm in Jordan. His parents wanting him to delay his departure also indicates a lack of urgency and a lack of risk of harm in Jordan. This leads the Tribunal to a conclusion that the applicant was not facing any serious threat or harm in Jordan and that the claims for protection were not genuine.

Previous visa applications.

89. According to his protection visa application, the applicant had applied for a student visa in Australia in 1999, which is before the incidents, including detentions and interrogations, occurred. The applicant said that in 2002 and 2007 he applied for a visa for the West Bank but did not get this, so it was not only to Australia that he applied.

However, the Tribunal is of the view that the applicant had wanted to travel to Australia as long ago as 1999 and that the protection application was another attempt to achieve this aim and his desire to travel to Australia is not because he faces harm for a Convention reason in Jordan.

90. Having considered the above matters, the Tribunal is of the view that the applicant is not a reliable or credible witness. As a consequence, it is not prepared to rely on the applicant's information without supporting evidence

Claims for protection

91. The applicant claims that he is of Palestinian origin. The Tribunal accepts that this is the case. It accepts that his grandparents were forced to go to Jordan in the 1940's. His family now lives in Jordan.

92. The applicant claims that his family situation is affected by the fact that three of the applicant's Palestinian cousins, who reside at [Village 1], are supporters of Hamas. The applicant's family is perceived guilty by association because of their relationship with these cousins. There is no information on this claim, other than that of the applicant. As indicated earlier, the Tribunal is not prepared to rely on this information alone. Further, the applicant failed to mention this claim at the Tribunal hearing, which indicates that it is not a genuine claim.

93. The Tribunal is not satisfied that the applicant has Palestinian cousins who are supporters of Hamas, nor that the applicant's family is perceived as guilty by association because of their relationship with these cousins.

94. The applicant claims that the government had adverse information about him and had found him guilty by association with his cousins and so prevented him applying for a public education in Jordan or abroad. As the Tribunal has not accepted the applicant's claim in relation to his cousins, it does not accept that his failure to obtain a place at a public university due to the government having adverse information on him.

95. The applicant gave evidence that he worked at a [retail shop] and before that at his father's coffee shop. In 1999 he worked at a [another retail] shop for a year. These are his only jobs. The information provided in his visitor visa application and in his protection visa application, which was verified by the Department, is that he was employed by [Company 3] from 2007 to 2011. The Tribunal finds that the applicant worked at [Company 3] from 2007 to 2011. Prior to that, it accepts that he worked in a [retail shop] and his father's coffee shop.

96. The applicant claims that when at work he would speak up against the discrimination he faced and the things that he said would be considered treason and sedition and would be punished severely. There is only the applicant's very limited evidence of this. As the Tribunal has found that the applicant is not a credible witness, it does not accept this claim.

97. The applicant claims that he realised that intelligence agents were following him around. Several times he saw them patrolling around his parent's home. They also loitered at the cafeteria. There is only the applicant's very limited evidence of this. As

the Tribunal has found that the applicant is not a credible witness, it does not accept this claim.

98. The applicant claimed that intelligence agents interrogated him on three occasions. The applicant claimed at the Department interview that he was detained in 2004, 2007 and 2009. He gave this evidence at the Tribunal hearing**.**

99. In the statement with the protection visa application, he said that in summer 2009, he had to complete a unit called [name deleted: s.431(2)] when a Lieutenant took classes for two months. This person made derogatory remarks about Palestinians which the applicant took issue with and replied to. He was cautioned many times about this.

100. At the hearing, he said that he challenged the lecturer. The lecturer became upset and called someone. A car came and took him to the intelligence office for three days. He was beaten and abused verbally. He was deprived of food. He was questioned. He was told not to comment on the lectures another time.

101. The Tribunal accepts that such a course would be taught at university by military personnel. However, there is no information, other than that of the applicant, that these events occurred. The evidence given at the hearing is significantly more detailed and different to that in the original claim. The Tribunal is of the view that such a significant and crucial claim, of detention and ill-treatment, would be raised in a protection visa application rather than later at interview and hearing. This leads to the conclusion that the claim has been made in order to claim protection and has been later exaggerated and embellished to strengthen the original claim. This leads to the view that the claim is not genuine.

102. The applicant said that in 2007 there was a soccer game between Jordanian and Palestinian teams. There was a fight afterwards and security forces took them to the police station. They were verbally abused and they were kept at the police station for two days. His family had to bail him out. In the original statement with the protection visa application, it was claimed that he was interrogated on three occasions, without giving details. Again, the evidence given at the hearing is significantly more detailed and different to that in the original claim. The Tribunal is of the view that such a significant and crucial claim, of detention for two days, would be raised in a protection visa application rather than later at interview and hearing. This leads to the conclusion that the claim has been made in order to claim protection and has been later exaggerated and embellished to strengthen the original claim. This leads to the view that the claim is not genuine.

103. The applicant claims that in 2004 he was at the coffee shop with his father and there was a problem between a Palestinian worker and a Jordanian about the bill. The latter reported the worker as stepping on the Kings' picture and they were all taken to the police station. They were questioned and then left. The worker had to go to Court and the applicant had to give evidence. The Palestinian was found guilty because they believed the Jordanian. This indicates that the applicant was involved in this incident as a witness and was not interrogated or detained. There is no claim that the applicant was harmed in this incident. The Tribunal is of the view that it demonstrates a degree of antipathy towards Palestinians and some discrimination against them in the legal system. However, the harm does not amount to serious harm and there is no indication that the applicant himself was harmed.

104. The applicant claims that his family have told him that suspicious individuals have been enquiring as to his whereabouts and his family have told him not to return as he will face terrible consequences**.** He has stated that he cannot get any information to prove this from authorities in Jordan. The Tribunal has found that the applicant is not a credible witness. Without any evidence in support of the applicant's own, the Tribunal does not accept this claim.

105. The applicant claims that the discrimination and ostracisation [sic] he faced escalated at university. However, the applicant completed this subject on military history and obtained his degree. This leads to the Tribunal to the view that he did not face discrimination and ostracisation [sic] at university as he claims.

106. The applicant claims that he did not get into university after school, although Jordanians with the same qualifications did get in. He applied for jobs and did not get them. He claims that he faced discrimination. He had to repeat two subjects at university but a Jordanian would not have had to repeat.

107. The independent information before the Tribunal indicates that there are some adverse issues for Palestinians in Jordan. Palestinians are said to be under-represented within the Jordanian government and by the Jordanian electoral system. There have also been reports that Jordanians of Palestinian descent face discrimination in employment by the government and the military, and in admission to universities. However, commentators, including Amnesty International, have not expressed any concerns about the human rights situation for Palestinians in Jordan. This may indicate that while there are difficulties, these are not major of serious concern to these organisations. This leads the Tribunal to the conclusion that if he returned to Jordan the applicant may suffer some adverse treatment in the way of discrimination but this would not amount to the degree of serious harm in the definition of a refugee.

Sur place claims

108. It is generally accepted that a person can acquire refugee status *sur place* where he or she has a well-founded fear of persecution as a consequence of events that have happened since he or she left his or her country. However, this is subject to s.91R(3) of the Act which provides that any conduct engaged in by the applicant in Australia must be disregarded in determining whether he or she has a well-founded fear of being persecuted for one or more of the Convention reasons unless the applicant satisfies the decision maker that he or she engaged in the conduct otherwise than for the purpose of strengthening his or her claim to be a refugee within the meaning of the Convention.

109. The applicant claims that since his arrival in Australia he has been very vocal in condemning the discrimination and hostility he faced in Jordan. When asked for details by the Tribunal, the applicant said that he spoke out about the regime in Jordan to his friends and his brother's friends. The Tribunal accepts that he has spoken as he claims. However, these remarks were made in an apparently informal manner, privately to friends and not in any public forum.

110. The Tribunal has found that the applicant did not speak out against discrimination in Jordan. The Tribunal has also found that the applicant is not a credible witness. Given these findings, together with the very informal and private nature of his comments in Australia, the Tribunal is of the view that the applicant has made these comments in

order to strengthen his claims for protection. The Tribunal is not satisfied that the applicant engaged in the conduct otherwise than for the purpose of strengthening his claim to be a refugee within the meaning of the Convention.

111. The applicant claims that the fact that he sought asylum in Australia would confirm in the Jordanian authorities eyes that he is a traitor and involved in suspicious activity which made him flee Jordan. He referred to the bridging visa in his passport as proof that the authorities would find out he had sought protection. However, as indicated to the applicant at the hearing, the visa itself does not in any way identify the reason it was granted. It is a standard visa issued to any non-citizen for a temporary period of time. It would not alert the Jordanian authorities to his application for protection. The applicant has also stated that the Jordanian authorities know he applied for protection because his friends in Australia know. However, he has not given any information which would indicate that the Jordanian authorities are aware of his claim for protection through his friends here. There is no information before the Tribunal to indicate that the Jordanian authorities would be aware of the applicant's refugee claims or his application for protection.

112. The Tribunal finds that the applicant will not experience serious harm as defined in the Migration Act upon return to Jordan. The Tribunal does not accept that the applicant would face a real chance of persecution for a Convention-based reason if he was to return to Jordan. It follows that the applicant does not have a well-founded fear of persecution for a Convention-based reason.

Complementary protection

113. The Tribunal has had regard to the definition of "significant harm". It has also considered the definitions of "torture", "cruel or inhuman treatment or punishment" and "degrading treatment or punishment" in s.5(1) of the Act. The Tribunal accepts that Palestinians in Jordan face some degree of discrimination and marginalization in Jordan, Palestinians are said to be under-represented within the Jordanian government and by the Jordanian electoral system. There have also been reports that Jordanians of Palestinian descent face discrimination in employment by the government and the military, and in admission to universities. The Tribunal is not satisfied that the applicant has suffered significant harm in the past. The applicant was educated at primary and high school in Amman and then at university in Amman, obtaining a Bachelor of Marketing in February 2010.

114. The applicant gave evidence that his brothers [employment details of family members deleted: s.431(2)].

115. This indicates that the applicant's family are secure and stable and have access to education and employment or business opportunities. Given this information, the Tribunal is of the view that the applicant would have access to employment or business opportunities and further study. Any discrimination or marginalization faced by the applicant on return to Jordan would not amount to significant harm.

116. Having regard to all of the circumstances, the Tribunal is not satisfied that it has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's being removed from Australia to Jordan, there is a real risk that he will suffer significant harm.

117. Having carefully considered all of the evidence, the Tribunal is not satisfied that it has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed to Jordan, there is a real risk that the applicant will suffer significant harm in the form of being arbitrarily deprived of his life, having the death penalty carried out, or being subjected to torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under s.36(2)(aa).

CONCLUSIONS

118. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).

119. 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 to whom Australia has protection obligations under s.36(2)(aa).

120. 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) for a protection visa.

DECISION

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