

060720861 [2006] RRTA 200 (23 November 2006)

DECISION RECORD

RRT CASE NUMBER: 060720861
DIMA REFERENCE(S): CLF2006/65246
COUNTRY OF REFERENCE: Israel
TRIBUNAL MEMBER: Shahyar Roushan
DATE DECISION SIGNED: 23 November 2006
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

This is an application for review of a decision made by a delegate of the Minister for Immigration and Multicultural Affairs to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of Israel, arrived in Australia and applied to the Department of Immigration and Multicultural Affairs 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 dated and posted on the same day.

The delegate refused the visa application as the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

The applicant applied to the Tribunal for review of the delegate's decision.

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

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, in this case 16 June 2006, although some statutory qualifications enacted since then may also be relevant.

Section 36(2) of the Act relevantly provides that a criterion for a Protection (Class XA) 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 as amended by the Refugees Protocol. 'Refugees Convention' and 'Refugees Protocol' are defined to mean the 1951 Convention Relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees respectively: s.5(1) of the Act. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

Australia is a party to the Refugees Convention and the Refugees Protocol and generally speaking, has protection obligations to people who are refugees as defined in them. Article 1A(2) of the Convention 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.

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) 205 ALR 487 and *Applicant S v MIMA* (2004) 217 CLR 387.

Sections 91R and 91S of the Act now qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

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

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.

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.

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.

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.

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.

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

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.

The applicant appeared before the Tribunal to give evidence and present arguments.

The applicant was represented in relation to the review by his registered migration agent.

Application for a protection visa

According to his application for a protection visa, the applicant is a national of Israel, born in City C. He is of Arab ethnicity and a practising Christian. He speaks Arabic and Hebrew and speaks some other languages. He has completed his education to a substantial level and was a self-employed contractor for some years. Prior to running his own business, he worked in another capacity for a period. He lived at the same address in Israel for a stated period. He has not provided details of his residential addresses after that period. The applicant visited Australia on a previous occasion remaining briefly. He travelled elsewhere previously on multiple occasions. He has siblings, who live in Israel and one who lives overseas.

He came to Australia legally recently using an Israeli passport issued in his own name. His visa to Australia was issued shortly prior to his arrival.

In his application, the applicant has replied "yes" to a question asking him whether he has ever been "convicted of a crime or offence in any country (including any conviction which is now removed from official records)".

In a lengthy statement accompanying his application for a protection visa, the applicant makes the following claims.

After the confiscation of the family land by Israel many years ago, the applicant's family moved to City C where he grew up. About 10,000 Christians live there. He was in his teens when his father died. The family lost their house because of their inability to pay all the bills. His mother received a little help from the Israeli government, but did not receive the same level of assistance that Jewish single mothers normally receive.

After his father's death, the applicant was falsely accused of breaking into cars and driving an uninsured car without a licence. A Jewish neighbour was also arrested, but he was not convicted after his mother made a deal with the authorities. After being arrested, the applicant was put in jail for a short period. He was told that if he did not confess, he would remain in jail for a long time. The applicant signed documents which he did not know the meaning of and had to confess to a crime he had no information about. When searching his house the police found a piece of jewellery which his father had given to his mother. As the family was unable to provide a proof of purchase, the applicant was accused of having stolen the item. Following a court order, he attended an institution for some months where he was assessed by various medical experts. He felt isolated and was picked on by Jewish boys.

While still in his teens he was assaulted by a militant Jewish man who lived near his home. In self-defence, the applicant scratched the man with a sharp implement. Nevertheless, the applicant was hurt badly and spent some days in hospital with serious injuries. When he was released from the hospital he was arrested by the police and spent more time in jail until he unwillingly confessed to having scratched the Jewish man. The police took no action against the Jewish man and accused the applicant of having started the fight. The Jewish man also assaulted another family member. Following a court order some months later, he was sent to an institution in another city. He remained there for some months. As a consequence of these events, he missed out on a period of school.

As a teenager, Jewish boys picked fights with him and punched him knowing that he could not fight back for fear of being arrested by the police. His other family members also experienced similar treatment. He was also discriminated against whenever he went to the bank to cash a cheque. It took the staff at the bank longer to process the cheque and they would always call the issuing source to verify the cheque. He was also treated differently at the hospital.

On many occasions he was questioned by the police and the security forces. He was questioned on a regular basis on whether he was involved in terrorist activities or with Palestinian organisations or whether he was making bombs. He has also been assaulted on a number of occasions. He was pushed into the police car in a way that his head hit the roof of the car. He was also hit with microphones and sticks carried by the police.

Some years ago he was at a friend's house when the police burst in. His Jewish friends were with him. The police asked for their IDs and slapped the applicant in the face and even though his friends complained about how he was treated, nothing happened.

One summer he was on his way to a local beach when the Israeli Special Forces stopped his car. He was forced out of the car at gun point and was told to sit on the roadside. His car was searched for bombs. He was kept for some time, was told to shut up and was called a filthy Arab. He was also told to go or he would not be around for long. This he took to mean he should leave Israel.

On a later occasion he was on his way to the local grocer when he was pulled over by the Israeli Special Forces. He recognised one of the men from the previous incident. The same man told him that they were working with the police in keeping an eye on him and that if he did not leave Israel something would happen to him.

Following this, he was at his apartment, situated in a Jewish neighbourhood, when the police burst into his apartment. They searched his apartment for some time and broke many things. They told him and a family member to shut up.

After this, he was living at a different address when the police again went to his house with dogs claiming to be looking for drugs and bombs.

Soon after he was out shopping when his car was stopped by some men from the Israeli Special Forces. He recognised one of the men from the previous incidents. They searched him and his car and said that they were looking for bombs. He was told to leave Israel if he did not want to get harassed. He complained to the local police, but was told to go away. That year his friend died tragically, but there were rumours that he had been murdered.

More recently, he was in another city with his friend when they were pulled over by the Police. They were ordered out of the car and were physically attacked. When the applicant complained, he was told to shut up and leave if he did not like the situation. He was assaulted which left a bruising and all his belongings were dumped in the middle of the road. When he complained about what happened at a police station he was told to go away. He was told that making a complaint would make things hard for his Jewish friend who was driving the car at the time they were pulled over.

In that same year the police broke down his door and entered his apartment saying that they were looking for drugs. They told him that they had found drugs directly below his apartment and thought that the drugs belonged to him. The police damaged many things in his apartment.

It took him a number of years to save enough money to pay all his bills and travel. When he was leaving Israel, he was interrogated for some hours at the airport and physically searched by the authorities who wanted to know why he had no return ticket and asked whether he was going to bomb a plane.

The applicant's family have always been treated badly by Muslim Arabs who think that Christian Arabs cooperated with the Israeli intelligence agencies. Muslim Arabs have derogatory names for Christian Arabs. He has never lived in a Muslim Arab neighbourhood and would not be welcome there.

Application for review

In support of his application for review, the applicant's adviser provided a covering submission, a clarifying statement from the applicant and a number of reports from a variety of different sources regarding the situation of the Arab minority in Israel.

In his clarifying statement, the applicant states that he and his family lived predominantly in a Jewish neighbourhood as it was deemed safer by his mother. When he was arrested by the police following false accusations of theft, he was kept at a police station for many hours and interrogated. He was intimidated and terrified. Although he was only a teenager he was put in a cell with a group of adult men who had committed serious crimes, He was harassed, threatened and assaulted by other inmates. On one occasion he was attacked. In the end he confessed in order to save himself. He is still not aware of the crimes he was accused of. However, because of his record as a juvenile and his ethnicity he will always be unfairly targeted by the authorities.

The Hearing

The applicant was asked about his residential address during a particular period until his departure from Israel. He said he lived at a friend's house in City C and sometimes he went to his mother's house. He was asked if he lived anywhere else in Israel during this period. He said no. He was asked if his friend who he lived with is Jewish. He said yes.

The applicant confirmed his employment and the relevant period of employment until his departure from Israel.

The applicant was asked why he did not wish to return to Israel. He said the police are after him. He has been persecuted for many years. Israel's security forces have threatened to kill

him more than once and he knows that one of the officers, O, will not leave him alone. That officer promised him more than once that if he did not leave Israel he will make him disappear.

The Tribunal asked him why his mother had not engaged a lawyer when he was falsely accused of breaking into cars. He said she did not have any money to engage lawyers.

The Tribunal asked him about the incident whereby he was assaulted by a Jewish man. He said at that time when he was in his teens, he was on his way home when a militant Jewish man in his neighbourhood prevented him from walking any further and forcefully asked him to change his route. He said to the applicant to go away and that he did not like Arabs. When the applicant refused to change his course, the man pushed him against the wall seriously injuring him and continued to beat him. The applicant took out an implement out of his pocket and swung it left and right injuring the man. Other people intervened and separated them, but the man's friends continued to beat him. Eventually, he ran home and his mother sent him to the hospital. He was arrested after he came out of the hospital. He spent a period in jail and was told that if he did not confess he could spend a very long time in jail. He decided to confess in order to avoid imprisonment. He was asked if he ever encountered the man again. He said no, he avoided going out at times that the man was out because the neighbours had told him that the man is going to kill him.

The Tribunal ask him about his claim that as a teenager Jewish boys picked fights with him. He said they usually insulted him by calling him a "dirty Arab" and that they did not want him there. They also damaged his bicycle and deflated his ball. As an adult while he was occasionally bothered by civilians, it was not at the same level as when he was younger.

The Tribunal asked him about other instances of discrimination at the bank or the hospital. He said at the bank he was always faced with delays in processing cheques. They did not trust him and sometimes had to verify the source and the signature on cheques. This was in contrast to the five minutes that took his friend to cash the cheques. He said that at the hospital he was usually the last person to be treated.

The Tribunal asked him about a particular incident several years ago when he was at a friend's house. He said he was watching soccer with a friend at an acquaintance's house when the police came in. He did not know why the police had come and that they were probably looking for stolen goods. When he asked a policeman if anything was wrong, he was told to shut up if he did not want to end up in the hospital. When he asked another policeman the same question, the first policeman slapped him so hard that he fell back on his seat and told him to calm down. He later went to lodge a complaint at a police station, but was told to go away.

The applicant was asked about the incident in summer some years ago. He confirmed that he was on his way to a local beach when the Israeli Special Forces stopped his car. He was forced out of the car at gun point and was told to sit on the roadside. His car was searched for bombs or electronic devices that could trigger a bomb. He was told by one of the officers, O, that his place was not in Israel and that if he was in the Occupied Territories he would get a bullet in his head.

The applicant confirmed that the following year he was on his way to the local grocery store when he was stopped by men from the Israeli Special Forces, including O, who made a

comment to the effect that the applicant was still in Israel. When the applicant responded, he told him not to get smart otherwise something would happen to him.

The applicant was asked about the subsequent incident one year later. He said he was at his apartment waiting for pizza when the police burst into his apartment. He was asked why his place was searched. He said he did not know. When pressed, he said the police never produced a search warrant and usually searched for stolen goods, drugs and bombs. On this occasion they turned the place upside down and left a short time later.

The applicant confirmed that after some months the police again went to the house he was residing in looking for drugs, stolen goods and bombs. They made a mess and acted as though they were there to break things; and when he said something he was told to shut up.

In the summer of the same year he was in his car when he was pulled over by several men from the Israeli Special Forces, including O. They looked for bombs, nails, etc. He was not even allowed to carry a tool box in his car. He was told “you know, one day something will happen to you”. The applicant said his friend was murdered. It was put to him that in his statutory declaration he had claimed that his friend died tragically. He stated that people said that his friend had died tragically, but his family did a check and found signs of violence. It was put to him that his friend could have been murdered by anybody. He said his friend was a good person and did not harm anyone. It is hard to believe that he just died the way he did.

The applicant was asked about the incident in another city. He confirmed that on that occasion he was travelling in his friend’s car when they were pulled over by the police for a traffic infringement. The police asked the applicant for his ID and asked him where he was from. He was told to get out of the car and when he protested his innocence, the policeman assaulted him with such a force that he was hurt. His friend asked the police to leave the applicant alone. The police told his friend not to hang around with someone like the applicant and that this was not good for his future. Following this incident, the applicant went to the police to file a complaint, but was told to get lost.

The applicant was asked about the incident later that same year. He said this time the police had a quantity of cannabis as evidence when they came to search the house. The cannabis was found under the balcony of the apartment immediately below. The police did not search the house below because they did not have a search warrant. The Tribunal asked the applicant why he had never approached a lawyer or a human rights organisation to challenge the legality of these searches. He said once he gave an anonymous interview at a radio station about how Arabs have no rights. His day to day existence was stressful and every time he went to the police he was told to get lost. The discrimination against Arabs is directed from the top and he could not see himself approaching a Member of the Knesset.

The Tribunal put to him that the interrogation he was subjected to at the airport could happen anywhere if a one way ticket is produced. He said only if one is an Arab a one way ticket is a problem.

The applicant said that he was questioned frequently by the police on the street who asked him where he was from and what he was doing, what he had in his car and whether they would find anything if they went to his house. He was also hit by police telecommunication equipment. He was hit on a place that would not leave a mark. He was asked when the last time that this happened was. He said how many years ago this occurred.

The applicant was asked about his concerns regarding Muslim Arabs. He said Christian Arabs are seen as collaborators with Israel and are thought to be with America because of their faith.

The Tribunal put to him that O knew where he lived, but he did not do anything to him in all the years that he was in Israel. He said that was his life and he was threatened more than once. He did not have to be dead to be proved right. The applicant referred to an incident 20 years ago when two security officers were found to be involved in the murder of two Arabs. After being suspended for 5 years, they went on to occupy important senior positions in the government. He said the hatred towards Arabs is directed from the top and government ministers have referred to Arabs as a problem and that they are like a cancer.

It was put to the applicant that if he was not involved in any organisation or activity why the authorities were after him. He said his mother had a Palestinian boyfriend to whom she was married for a while. Perhaps they suspected that he was working with the boyfriend who was working with others. It is also possible that because his father's land was confiscated they feared that the applicant would seek revenge.

The Tribunal discussed with the applicants' adviser its concerns regarding the case. The Tribunal explained to her that putting the applicant's imprisonment as a juvenile aside, the more recent incidents do not suggest that he has suffered serious harm. She responded by stating that the applicant was subjected to a significant level of harassment and that the cumulative impact of his experiences constitute serious harm. She added that the sole purpose behind the applicant's treatment was not appropriate and adapted to achieving some legitimate object of the country. Rather, his treatment was due to his ethnicity.

Following the hearing, the applicant's adviser provided a further submission regarding the facts of the case and the law to be applied. In doing so she listed the incidents of harm claimed to have been suffered by the applicant and argued that each of these incidents amounts to serious harm. She submitted that the Tribunal should consider the totality of the applicant's experiences and their cumulative effect. She further submitted that whenever conflict between Israel and Palestine reaches crisis point or Arab citizens within Israel are regarded with fear for whatever reason, the risk of serious harm for all young Arab men from Israeli authorities, who act with disproportionate force when dealing with Arab Israelis, is increased.

Evidence from other Sources

In 2001 the International Federation for Human Rights published a report on the status of Israel's Arab citizens. The following is an excerpt from the report's conclusions:

The mission observed that Israeli Arab citizens suffer much totally unfounded legal and empirical, discrimination. This discrimination is both direct, - the result of using national or religious allegiance as a differentiating criterion, and indirect, - considering the impact that the use of other criteria has on the Israeli Arabs, less obvious, but still particularly deleterious. Amongst the direct discrimination, the clearest is caused by the Law of Return - any Jew can immigrate into Israel, however Arab immigration is made particularly difficult, even if it is for family regrouping. Other obvious discrimination relates to caused by access to civil jurisdictions in claims linked to employee status, and to delegating to Zionist organisations the management of Israeli

state-owned land. Amongst indirect discrimination, we must especially stress - even if slight improvement has been seen recently - the small budgets allocated to Arab municipalities despite their substantial needs, effects linked to the dominance of Hebrew in public life, as well as the advantages linked to completion of service in the Israeli armed forces, be it through access to employment or social benefits.

These discriminations contravene the international commitments taken by the State of Israel. They constitute in particular violations of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural rights and the International Convention on the Elimination of All Forms of Racial Discrimination. These violations have been noted and condemned by the United Nations Committees responsible for monitoring the application of these conventions by the States Parties.

The mission also condemns the repressive and brutal attitude of the Israeli authorities in October 2000 during the Arab population's legal demonstrations expressing natural solidarity with the revolt of the Palestinians living in the occupied territories. This repression shattered the trust of Arab citizens in the institutions of their State, and strengthened their Palestinian nationalist feeling. This accentuated the evolution of what began in 1976 (The Land Day, March 1976) and continued as of 1987-1988 (first Intifadah, which strengthened solidarity between the Palestinians of Israel and the Palestinians of the Gaza Strip and the West Bank). The repression suffered by the Arabs of Israel since October 2000 risks widening the gap between the State of Israel and this part of its population, moreover the Arabs resistance justifies a posteriori the distrust of which they have been victims since 1948 by a large part of the Jewish Israeli opinion and Israeli administration which consider them as a "cinquième colonne" (spies).

(International Federation for Human Rights, *Foreigners within: The status of the Palestinian minority in Israel*, Report no 310/2, July 2001, <http://www.fidh.org/magmoyen/rapport/2001pdf/il0407a.pdf>)

The US Department of State provides the following information on the situation of the Arab minority in Israel:

National/Racial/Ethnic Minorities

The 2003 report of the Orr Commission, which was established following the police killing of 12 Israeli-Arab demonstrators and a Palestinian in October 2000 (see section 1.a.), stated that government handling of the Arab sector was "primarily neglectful and discriminatory," was not sufficiently sensitive to Arab needs, and that the government did not allocate state resources equally. Consequently, "serious distress prevailed in the Arab sector..." including poverty, unemployment, a shortage of land, serious problems in the education system, and substantially defective infrastructure. Problems also existed in the health and social services sectors.

In June 2004 the government adopted an interministerial committee's proposals to act on some of the Orr Commission's findings, including: establishment of a government body to promote the Arab sector; creation of a volunteer, national civilian service program for Arab youth; and the creation of a day of national tolerance. At year's end the government implemented neither these proposals nor the original Orr Commission recommendations. On September 18, the PID closed the investigation into the police killings in the October 2000 riots; however, on September 28, the attorney general and the PID decided to reexamine the investigation (see section 1.a.). At year's end there had been no further action.

In December 2004 the Knesset established a subcommittee, chaired by an Israeli-Arab member, charged with monitoring needs of the Israeli-Arab sector and advocating alterations in the budget to benefit that sector. The subcommittee met during the year, but, according to Mossawa, the government's response to the subcommittee's queries was inadequate.

According to 2004 reports by Mossawa and the Arab Association for Human Rights, racist violence against Arab citizens has increased, and the government has not acted to prevent this problem. Advocacy groups charged government officials with making racist statements.

In June 2004 the Jerusalem District Court filed six indictments for incitement to racism against fans of a local soccer team for shouting "death to the Arabs" at a soccer match. According to Mossawa fans engaged in similar anti-Arab behavior at soccer matches in September, but the police did not make arrests. In a January 10 letter to the Israel Football Association (IFA), Mossawa charged that the IFA had not acted to prevent racist activities at matches. In a March 7 letter responding to Mossawa's concerns, Mossawa reported that the group pledged to work against racism, but Mossawa has claimed that the IFA has still not taken actions to address this problem.

In March a Dahaf Institute poll of Israeli Jews found 59 percent of those polled agreed or tended to agree that the state should encourage Israeli Arabs to emigrate. On September 21, a major local newspaper published a column whose author advocated that the country encourage its Arab citizens to emigrate.

Approximately 93 percent of land in the country is public domain, the majority of which is owned by the state, with approximately 12.5 percent owned by the Jewish National Fund (JNF). All public lands and that owned by the JNF are administered by the governmental body, the Israel Lands Administration (ILA). By law public land may only be leased, and the JNF's statutes prohibit land sale or lease to non-Jews. In separate petitions to the high court in 2004, Adalah and civil rights groups sought, among other points, nondiscriminatory procedures for allocating and leasing land. In January the attorney general ruled the government cannot discriminate against Israeli Arabs in marketing and allocation of lands it manages, including lands the ILA manages for the JNF. Adalah criticized the attorney general, however, for also deciding that the government should compensate the JNF with land equal

in size to any plots of JNF land won by non-Jewish citizens in government tenders.

The community of Katzir, a town in the Galilee established by the Jewish Agency, had refused to provide an Israeli-Arab family, the Ka'adans, title to a plot of land despite a 2000 supreme court ruling that the government cannot discriminate against Israeli Arabs in the distribution of state resources, including land. The family petitioned the court again in September 2003 to compel the government to implement the court's 2000 ruling. In May 2004 the ILA allocated the plot of land to the family, who signed a contract on December 19, enabling them to start building their house.

Education ministry regulations required Israeli-Arab contractual or maintenance workers in Jewish educational institutions in Jerusalem to undergo mandatory security checks and to be supervised by a Jewish foreman. After a petition by Adalah, the attorney general ordered in June the cancellation of the regulations; however, at year's end it could not be determined that the regulations were no longer applied.

Israeli-Arab advocacy organizations have challenged the government's policy of demolishing illegal buildings in the Arab sector. They claimed that the government restricted issuance of building permits for Arab communities more than for Jewish communities, thereby limiting Arab natural growth.

In February 2004 security forces demolished several homes in the Arab village of Beineh, claiming that they were built illegally. On April 19, Adalah appealed to the attorney general requesting that he reverse a decision not to indict police officers for alleged assault and property damage involved in the house demolition operation. Adalah claimed that the police investigation was negligent and that it was unreasonable not to indict the police officers. At year's end the appeal remained pending.

In January the government established a new police unit to combat illegal construction and land use. The media reported that the unit will focus on the Israeli-Arab sector and areas surrounding development towns.

The Orr Commission found that "suitable planning should be carried out [in the Arab sector] as soon as possible to prevent illegal construction..." A ministerial committee, created to advise the government on implementing the Orr Commission recommendations, called on the ILA to complete master plans for Arab towns, approximately half of which currently lacked such plans. In June 2004 the supreme court ruled that omitting Arab towns from specific government social and economic plans is discriminatory. This judgment builds on previous assessments of disadvantages suffered by Arab Israelis. New construction is illegal in any towns that do not have master plans or in the country's 37 unrecognized Bedouin villages. In September, according to a Bedouin advocacy group (the Regional Council for Unrecognized Villages in the Negev), security forces demolished several Bedouin homes in the unrecognized villages of Al-Zaroora, Al-Bhaira, Al Sir, and Al-Mazra'a.

Israeli-Arab organizations and some civil rights NGOs challenged as discriminatory the 1996 "Master Plan for the Northern Areas of Israel," which listed priorities as increasing the Galilee's Jewish population and blocking the territorial contiguity of Arab towns. The Israeli-Arab organizations presented their objections at a hearing in March 2003, but the National Council for Building and Planning, a government body responsible for developing the master plan, has not responded. To date the government has not implemented this plan.

The Bureau of Statistics noted that the median number of school years for the Jewish population is three years more than for the Arab population. According to data released in September by the Higher Arab Follow-up Committee, the Arab student dropout rate overall was 12 percent and 70 percent at schools in the unrecognized villages in the Negev, compared with 6 percent overall in Jewish schools.

Israeli Arabs also were underrepresented in the student bodies and faculties of most universities, professions, and business. According to Sikkuy's 2003-04 annual report, non-Jews made up 9.8 percent of university undergraduates and Israeli Arabs constituted 1 percent of all lecturers or professors at academic institutions--50 to 70 out of more than 3 thousand. In October an Arab Israeli was appointed for the first time as dean of research at the University of Haifa.

Well-educated Arabs often were unable to find jobs commensurate with their education. A small number of Israeli Arabs hold responsible positions in the civil service, generally in the Arab departments of government ministries. In 2003 the government approved affirmative action to promote hiring Israeli Arabs in the civil service. However, according to current government figures, only 3 percent of civil service employees were from the Arab sector. In November the deputy civil service commissioner reported that Arabs made up only 5.6 percent of the total number of new civil service employees hired in 2004. During a June 21 meeting of the Knesset Internal Affairs Committee, retired Supreme Court Justice Theodore Orr, who headed the Orr Commission, criticized the government for not implementing the affirmative action law.

A 2000 law requires that minorities have "appropriate representation" in the civil service and on the boards of government corporations. In January 2004 Prime Minister Sharon mandated that every state-run company's corporate board have at least one Arab member by August 2004. In June 2004 the media reported that the number of Arabs on state-run corporate boards had declined. According to data from the Government Companies Authority, during the year Arabs filled 50 out of the 551 board seats of 105 state-run companies.

Israeli Arabs complained upon occasion during the year of discriminatory treatment by the state airline. Mossawa reported that, it received complaints from Israeli Arabs of discriminatory treatment at the airport. According to the AAHR, in July two Israeli Arabs were prohibited from taking their laptop computers with them on an El Al flight from Austria to Israel; Jewish passengers were allowed to take their laptops. The Israeli Arabs used a different airline to return to Israel.

The law exempts Israeli Arabs from mandatory military service, and in practice only a small percentage of Israeli Arabs so served. Citizens who did not serve in the army enjoyed less access than other citizens to social and economic benefits for which military service was either a prerequisite or an advantage. Israeli Arabs generally were restricted from working in companies with defense contracts or in security-related fields. In December 2004 the Ivri Committee on National Service recommended that Israel Arabs be given an opportunity to perform national service. By year's end the government had not addressed the Ivri Committee recommendations. Males in the Israeli Druze community, which numbered around 100 thousand, and in the Circassian community, which numbered some 3 thousand, were subject to the military draft, and the overwhelming majority accepted service willingly. Some Bedouin and other Arab citizens not subject to the draft also served voluntarily.

The Bedouin sector of the population was the country's most disadvantaged. The Orr Commission of Inquiry report called for "special attention" to the living conditions of the Bedouin community. Approximately 140 thousand Bedouin lived in the Negev, half in 7 state-planned communities and 8 recognized communities, and the rest in 37 unrecognized villages. During the year the government officially recognized the Israeli-Arab village of Ein Hod in the Carmel area, after village residents had petitioned the government for more than 57 years. Recognized Bedouin villages received basic services but remained among the poorest communities. Unrecognized villages paid taxes to the government; however, they were not connected to the national water and electricity infrastructure and not eligible for government educational, health, and welfare services. In September ACRI and PHR petitioned the supreme court to require the government to connect a house in an unrecognized Bedouin village to the electrical power lines so a three-year-old suffering from cancer could benefit from air conditioning, as the doctor recommended. At year's end the request remained pending.

In March 2004 the supreme court issued a temporary injunction to prevent the ILA from spraying herbicide on Bedouin crops on state-owned land. According to Adalah the court extended its injunction in October 2004. In February the ILA admitted in an affidavit to the supreme court that it sprayed Bedouin agricultural fields with chemicals that were not approved by the agriculture ministry and banned from aerial spraying. After a November 28 hearing, the case was still pending.

Government planners noted that there were insufficient funds to relocate Bedouin living in unrecognized villages to new townships and that the average Bedouin family could not afford to purchase a home there. Clashes between authorities and residents of unrecognized villages continued during the year.

In July the government extended until March 2006 the 2003 Citizenship and Entry into Israel Law, which bars Palestinians from the occupied territories from acquiring residence or citizenship rights through marriage to Israelis (see section 2.d.). The government also amended the law to allow Palestinian men aged 35 and older and women aged 25 and older to request Israeli citizenship through family unification. In July Adalah petitioned the high court to suspend

implementation of the amended law as still discriminatory, and requested a court ruling on Adalah's 2003 challenge to the original law. In November during ongoing supreme court hearings on a petition by civil rights NGOs challenging this law, the government informed the court that since 2001, 25 Palestinian spouses of Arab citizens have been involved in terrorist activity. At year's end the case remained pending. (US Department of State's Country Reports on Human Rights Practices, 5, Israel and the occupied territories (Released by the Bureau of Democracy, Human Rights, and Labor in 2006, <http://www.state.gov/g/drl/rls/hrrpt/2005/61690.htm>)

FINDINGS AND REASONS

The Tribunal accepts that the applicant is a national of Israel.

The applicant's claims are based on the Convention grounds of race, religion and imputed political opinion. Essentially, he claims that as a juvenile Arab Israeli he has been falsely accused and wrongly convicted of crimes he had not committed. He claims that he has continually been harassed, threatened and discriminated against by the police and the security forces. He fears similar treatment if he were to return to Israel.

The Tribunal accepts that the applicant is a member of Israel's Arab minority and a Christian.

The Tribunal is prepared to accept the applicant's account of being falsely accused, forced to confess and wrongfully convicted many years ago of a crime he had not committed. The country information before the Tribunal confirms the disproportional representation of Arabs in the Israeli Juvenile system, the discriminatory treatment of Arab suspects in the judicial system and Arabs being the recipients of much harsher sentences than Jewish defendants. Instances of coerced confessions were also cited in the 2006 US State Department's Country Report on Human Rights Practices in relation to Israel. The Tribunal accepts that the applicant's detention and treatment following his arrest amounts to serious harm. Based on the evidence before it, the Tribunal accepts that the treatment levelled against the applicant was essentially and significantly for the reason of his race.

The Tribunal accepts that in the following year the applicant was involved in a scuffle with a militant Jewish man in his neighbourhood. He was severely beaten, but was able to fend off his assailant by wielding an implement, injuring him. The Tribunal accepts that applicant was hospitalised with severe injuries. The Tribunal accepts that while the Jewish man was not charged or punished for his act, the applicant was arrested and psychologically coerced into confessing that he had assaulted the Jewish man. The Tribunal accepts that the applicant was subsequently convicted and was forced to spend time at an institution. The Tribunal accepts that the applicants' experiences on this occasion were serious enough to amount to persecution on account of his ethnicity. The applicant stated at the hearing that he never encountered the man again and that he avoided going out at times that the man was out because the neighbours had told him that the man is going to kill him. The man, however, lived a short distance away from the applicant and it is reasonable to expect that if he wanted to harm the applicant he had ample opportunity to do so. The applicant did not claim to have been harmed by this man after this incident and the Tribunal is not satisfied that his chance of being harmed by him in the reasonably foreseeable future is real.

As the above incidents clearly show that over a period many years ago the applicant was propelled into a discriminatory juvenile criminal justice system through unfortunate and

random events instigated by iniquitous, opportunistic individuals. That said, after serving the sentences wrongfully imposed on him, the experiences that paralysed his life as a teenager were not repeated in the following years that he continued to live in Israel and the Tribunal is not satisfied that the chance of similar events occurring is anything more than remote. The Tribunal appreciates that as a consequence of these episodes, the applicant was left behind in his schooling and was unable to complete a portion of study. However, following his release the applicant was not prevented from pursuing his education and was able to complete his education to a particular level. The Tribunal is not satisfied that the applicant's educational setbacks amount to persecution.

The Tribunal accepts that as a teenager the applicant was subjected to name calling and minor property damage. At the hearing he stated that while he was occasionally bothered by civilians as an adult, it was not at the same level as when he was younger. The Tribunal appreciates that regular and petty acts of discrimination of the kind described by the applicant are most unpleasant and undesirable. However, whilst persecution involves discrimination that results in harm to an individual, not all discrimination will amount to persecution (see *Haji Ibrahim* (2000) 204 CLR 1 at 18-19, per McHugh J). Without wishing to understate the unsavoury nature of the applicant's experiences, the Tribunal is not satisfied that the discrimination the applicant faced, assessed cumulatively, reaches the standard of persecution within the meaning of the Convention as outlined on page 3 of this decision. Similarly, the Tribunal is not satisfied that the delays he faced when cashing cheques at the bank or when seeking treatment at the hospital amount to persecution within the meaning of the Convention.

The Tribunal accepts that the applicant was at an acquaintance's house at a time when the place was raided by the police looking for stolen goods. The Tribunal accepts that he was slapped and briefly held down by the police. In his written statement the applicant stated that he was badly treated after showing the police his ID. At the hearing he added that he was treated in the manner described after twice questioning the police by asking "if anything was wrong". While this does not in anyway excuse the police officer's inappropriate reaction, on the basis of the evidence before it the Tribunal is of the view that the applicant's experience on this occasion was essentially due to the spitefulness of the particular officer or officers involved and not necessarily a Convention reason. In any event, the Tribunal cannot be satisfied that the treatment the applicant was subjected to on this occasion was so serious to amount to persecution.

The Tribunal accepts that the applicant was stopped by the Israeli Special Forces on a number of separate occasions over a period of years; searched and threatened by an officer, O. The Tribunal has little doubt that these threats which warned him of death and disappearance were unsettling and upsetting for the applicant. However, according to his oral evidence O was aware of his place of residence and had ample opportunity to harm the applicant if he genuinely intended to do so. The fact that the applicant suffered no other harm at the hands of O throughout this period is indicative of the fact that the threats were designed to frighten and intimidate him and that O or the Israeli Special Forces did not seriously intend to act upon them. The Tribunal, therefore, finds that the threats in this case did not fall within s.91R(1)(b) and do not give rise to any real chance of persecution in the reasonably foreseeable future.

The Tribunal accepts that the applicant's house was the subject of a number of separate police raids, without warrant, over a period of years. The Tribunal also accepts that the police, who were looking for drugs, stolen goods or bombs, turned his place upside down and broke his possessions. The Tribunal is certain that these experiences were frightening for the

applicant and caused him much distress and inconvenience. However, the applicant did not claim to have suffered significant economic loss or any other harm and the Tribunal is not satisfied that these raids and their impact on the applicant, individually or accumulatively, amounted to serious harm within s.91R(1)(b). Moreover, the applicant did not know why exactly the police had come to his house. It is important to note that according to his oral evidence he stated which year he lived at his Jewish friend's house. It is therefore difficult to attribute the searches on the subsequent occasions to the applicant's ethnicity when it was his friend's house that was being searched. The applicant did not claim that his mother's house with whom he sometimes stayed during this period was also searched. In relation to the last occasion, he stated that although the police had found cannabis under the balcony of the apartment below which was occupied by certain Jews, they did not search that apartment without a warrant. That rule did not apply to the applicant and the police proceeded to search his place of residence. The Tribunal accepts that this is indicative of some form of discriminatory treatment. However, having carefully considered the applicant's evidence in relation to these incidents as a whole, the Tribunal cannot be satisfied on the basis of this evidence that the essential and significant reason behind these raids was the applicant's race or any other Convention reason.

The Tribunal accepts the applicant's account of his most recent experience in another city. The Tribunal accepts that the applicant was assaulted by a traffic police officer who had shown disdain for his ethnicity as an Arab. The Tribunal, however, is not satisfied that the assault on the applicant on this occasion was so serious to amount to persecution. The applicant's account of the incident suggests that he had found himself at a wrong place at the wrong time. The car he was travelling in was being driven by a Jewish friend. The car was stopped by the police for infringing traffic rules and the applicant was assaulted when he protested his innocence in response to orders to step out of the car. The police had left a short time later without even issuing a traffic fine. For these reasons, the Tribunal is not satisfied that the applicant's chance of facing similar treatment by the police to be more than remote and insubstantial.

The Tribunal has considered the applicant's claim of having been hit by police microphones and sticks on previous occasions. However, his evidence did not satisfactorily establish that these incidents were essentially and significantly for the reason of his race. In any event, at the hearing he stated that the last occasion on which he was assaulted in the manner described was several years ago. Apart from the unconnected and separate incident in another city, discussed above, he did not claim to have been the subject of such treatment by the police in recent years. The Tribunal is not satisfied that the applicant's chance of facing such treatment is real.

The Tribunal also accepts that the applicant was stopped and questioned regularly by the authorities. While the Tribunal appreciates that being perceived as a suspect and being questioned in the manner described by the applicant was distressing to him, the Tribunal is not satisfied that the implicit racism in Israeli authorities' attitude towards the applicant on these occasions amounts to serious harm within the meaning of the Convention as qualified by s.91R(1)(b). Furthermore, on the basis of all the material before it, the Tribunal is of the view that the actions of the Israeli police's actions in stopping the applicant and briefly questioning him was appropriate and adapted to achieving some legitimate object of the country, namely to protect Israeli citizens against security threats.

Finally, the Tribunal accepts that the applicant was questioned and searched before boarding his departing flight from Israel. The Tribunal accepts that while the applicant's possession of

a one way ticket out of Israel may have been the main instigator for the search, his Arab ethnicity was a significant motive for intensifying the adverse attention directed at the applicant. The country information before the Tribunal confirms that Israeli Arabs have faced discriminatory treatment at the airport and by the state airline. The Tribunal appreciates that the applicant was inconvenienced and that the search he was subjected to was unnecessary and intrusive. However, he was released prior to his flight and was able to depart the country without further incident. On the basis of the evidence before it, the Tribunal is not satisfied that the applicant's experience on this occasion amounts to serious harm or that it gives rise to a real chance of such harm in the reasonably foreseeable future.

Having individually assessed each of the applicant's experiences in the past, the Tribunal has carefully considered whether the incidents of harm referred to by the applicant following the earliest incidents amount to serious harm for a Convention reason when taken cumulatively. Based on the evidence before it and the Tribunal's findings in relation to each of the applicant's experiences, particularly the findings that some of the applicant's experiences were not essentially and significantly for a Convention reason, the Tribunal is not satisfied that the applicant's experiences over many years before his departure from Israel amount to persecution for a Convention reason when assessed cumulatively.

The discrimination faced by Arab Israelis is well documented. The Orr Commission report described Israel's treatment of its Arab citizens as "primarily neglectful and discriminatory" and cause of serious distress in the Arab sector. Arabs suffer from poverty, unemployment, a shortage of land, serious problems in the education system, insufficient representation in the civil service, problems in health and social service and substantially defective infrastructure. These problems have not been assisted by government officials, including Ministers, making racist statements. Whilst this unacceptable situation makes life difficult for Israel's Arab citizens, the Tribunal is not satisfied that this discriminatory attitude gives rise to a real chance of persecution in the applicant's case. The applicant worked continuously over many years. For nearly half that time prior to his departure he worked in a self-employed capacity. He did not claim and there is no evidence before the Tribunal to suggest that he has been or will be denied the capacity to earn a livelihood or to gain access to basic services at a level that threatened his capacity to subsist. While he may not have the same opportunities and may not be treated as Israel's Jewish citizens, the Tribunal is not satisfied that his treatment would amount to persecution if he were to return to Israel. Other than his race, the applicant provided no persuasive reason as to why the authorities would want to seriously harm or kill him. He was not involved in any organisation or any activities that could have made him a target of Israeli Special Forces or forces. The Tribunal does not accept that the Israeli authorities want to eliminate him because they fear that he might seek to avenge the seizure of his father's land a long time ago. Nor does the Tribunal accept as plausible the applicant's contention that his mother's relationship with a Palestinian man could give rise to adverse conclusions being drawn about him by the security forces. His mother's boyfriend was not involved in any activities that could support such a suspicion and the applicant did not claim to have ever been questioned by the authorities about this matter before. The Tribunal is not satisfied that the authorities have a genuine, continuing interest in the applicant for a Convention reason or that there is a real chance that he would be seriously harmed for a convention reason by the authorities if he were to return to Israel. The Tribunal is not satisfied that the applicant's record as a juvenile offender exacerbates his chances of facing harm. Whilst from time to time tensions rise between Israel's Jews and its Arab minority, as suggested by the Haaretz article provided by the applicant's adviser, there is no reliable evidence before the Tribunal from any source to suggest that these tensions translate into a

real chance of serious harm for all young Arab men at the hands of Israeli authorities. The Tribunal is not satisfied that the applicant's chance of facing serious harm as an Arab Israeli man at times of heightened conflict is real.

The Tribunal has considered the applicant's fear of Muslim Arabs. The applicant did not claim to have ever been harmed by Muslim Arabs or to have been imputed with adverse political opinion by members of that community. There was no evidence in the sources consulted to support the view that Christian Arabs in Israel are being targeted and systematically harmed by Muslim Arabs. On the basis of the evidence before it, the Tribunal is not satisfied that the applicant's chance of facing persecution by Muslim Arabs is real.

The Tribunal has carefully considered the articles and the news items provided by the applicant in support of his application for review. The Tribunal finds the news items and the reports to generally confirm the independent evidence before the Tribunal, discussed above, and do not add any value to his evidence.

Based on the totality of the evidence before it, the Tribunal is not satisfied that the applicant's fear of persecution for a Convention reason in Israel is well-founded.

CONCLUSIONS

Having considered the evidence as a whole, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore the applicant does not satisfy the criterion set out in s.36(2) for a protection visa.

DECISION

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

<p>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 <i>Migration Act</i> 1958. Sealing Officers ID: PRRTIR</p>
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