

**1210945 [2013] RRTA 492 (29 July 2013)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1210945  
**DIAC REFERENCE:** CLF2012/97198  
**COUNTRY OF REFERENCE:** Jordan  
**TRIBUNAL MEMBER:** Ms Philippa McIntosh  
**DATE:** 29 July 2013  
**PLACE OF DECISION:** Sydney  
**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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

## 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 16 May 2012 and the delegate refused to grant the visa on 18 July 2012. The applicant appeared before the Tribunal on 23 July 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The applicant was represented in relation to the review by his registered migration [agent].

### CONSIDERATION OF CLAIMS AND EVIDENCE

3. 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. An applicant must meet one of the criteria in s.36(2)(a), (aa), (b) or (c). That is s/he is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa. A criterion for a protection visa is that the applicant is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention<sup>1</sup> If a person is found not to meet the refugee criterion s/he may nevertheless meet the criteria for the grant of a protection visa if s/he meets 'the complementary protection criterion'.
4. Australia is a party to the Refugees Convention and, generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as a 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.
5. The complementary protection criteria require that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
6. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – to the extent that they are relevant to the decision under consideration.

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<sup>1</sup> 1951 Convention Relating to the Status of Refugee as amended by the 1967 Protocol relating to the Status of Refugees.

7. The issue in this case is, firstly, whether the applicant has a well-founded fear of being persecuted in Jordan for a Convention reason arising from his political opinion or his Palestinian background. If not, the second issue is whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of his being removed from Australia to a receiving country, in this case Jordan, there is a real risk that he will suffer significant harm.
8. In her decision (a copy of which the applicant provided to this Tribunal) the delegate found that the applicant was a citizen of Jordan of Palestinian background. She found that he did not have a well-founded fear of being persecuted for the reason of political opinion and that the discrimination he faced as a Palestinian-Jordanian would not amount to persecution. She also found that he did not meet the Complementary Protection criteria.
9. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

#### Summary of the applicant's claims

10. The applicant arrived in Australia in 2008, lodged a spouse visa application in April 2011, visited Jordan for a month in July 2011, withdrew his spouse visa application on 9 May 2012, and lodged the protection visa application on 16 May 2012. He claimed that as a Palestinian he had experienced discrimination in Jordan. Since the Arab spring in January 2011 he had also criticised the regime on social networking sites, calling for its overthrow and the implementation of democracy. He feared being immediately detained and subjected to gross human rights abuses if he returned to Jordan.

#### Extent of claims

11. In a statutory declaration to the Department with his application he said that he feared persecution on the Convention-related grounds of "race, actual and implied political beliefs" In relation to complementary protection he also feared significant harm, that being subjection to torture, or cruel or inhuman treatment or punishment, or degrading treatment or punishment.
12. In his oral evidence to the Tribunal he confirmed that he feared being discriminated against because of his Palestinian background and feared being harmed because of his active online criticism of the regime since the Arab spring in January 2011. Asked if he had any other reason for fearing significant or serious harm, he said he did not.

#### Nationality

13. The applicant has consistently described himself as a Jordanian national with no other nationality or right to enter or reside in a third country. In his oral evidence he confirmed to the Tribunal that he, his parents and all his siblings are currently citizens of Jordan.
14. He submitted a Jordanian passport in his name. It showed his place of birth as [location], the passport place of issue as [location] and the date of issue as [in] January 2008. The passport had expired [in] January 2013, and contained a "national number" Asked if there was any reason why he had not renewed it, he said he had not realised it had expired and, having realised this, intended to have it extended.
15. I am satisfied, and find, that he is a national of Jordan and of no other country.

## Discrimination

16. Evidence from Minority Rights International is that there are around three million Palestinians in Jordan, located overwhelmingly in the north-western part of the country, principally in the environs of Amman, Zarqa and Irbid. Most have Jordanian citizenship and many have integrated. Although Palestinians constitute around half of the population, they remain vastly under-represented in the Jordanian government. The government maintains concerns about political and religious radicalism among Palestinians<sup>2</sup>.
17. Discrimination against Palestinians in private and state-sector employment remains common and a quota system limits the number of university admissions for Palestinian youth. Government security operations disproportionately target Palestinians, especially operations conducted in the name of fighting terror.<sup>3</sup>
18. In 2013 the U.S. State Department<sup>4</sup> observed that “legal and societal discrimination” against persons of Palestinian origin remained widespread in Jordan during 2012.
19. The applicant was born in [year] and is now [age] years of age. As noted above his parents and [siblings] all hold Jordanian citizenship. He has said that as a Jordanian national of Palestinian ethnicity he was particularly discontented with the regime’s blatant discrimination against Palestinians in a wide range of areas including health, education, law enforcement and employment opportunities. He also said that the citizenship of “perceived Palestinian nonconformists” had been increasingly revoked in order to rid Jordan of Palestinian political agitators.
20. He also claimed that if he returned to Jordan and continued his political activities or expressed his political views he would be detained by intelligence and face gross human rights abuses. Because he was Palestinian he was also likely to be imputed with having a political opinion adverse to the interests of the Jordanian state.
21. In his oral evidence to the Tribunal he confirmed that he had been in Australia since 2008, and had told the Department he was involved in a protest in Jordan in 2005. Asked for details he said he was a student at that time, and it was a student protest at his brother’s university against inflation. The police were not allowed to enter university campuses but had done so, tear gassing students. He, his brother and a few of their friends were among many people who were arrested. The police held them for one night and day, told them not to get involved in these activities again, and released them without charge. He had heard that if you continued involvement in protests intelligence would arrest you and you would be imprisoned or disappeared. After that he was involved in a few small protests but was never caught. These protests related to the price of bread and in one case the US involvement in shooting some Iraqis.
22. He finished university in [year] and was involved in no further protest activity. He also did not get involved in any anti-government groups in Jordan because they were not allowed. Told that I assumed that nevertheless some did exist, he said that the King spoke “nicely”, but in fact the only groups allowed to protest were pro-monarchy.

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<sup>2</sup> Minority Rights Group International, World Directory of Minorities and Indigenous Peoples - Jordan: Palestinians, 2008, <http://www.unhcr.org/refworld/docid/49749cfcc.html> [accessed 25 March 2013]

<sup>3</sup> *ibid*

<sup>4</sup> U.S. Department of State, Country Reports on Human Rights Practices, Jordan, 2013

23. He confirmed that he had no problems with the authorities between [year] and 2008 when he left Jordan for Australia. After 2005 his parents had stopped him and his brother, who was now working in Kuwait, being involved in protests.
24. He confirmed that when he visited Jordan in 2011 for his sister's wedding he had stayed at his parents' house throughout and had had no problems with the authorities during that visit. He also confirmed that he had had no problems travelling in and out of the country using his own Jordanian passport. Asked why, on the protection visa application form (Part C, question 64), it was written that he had not re-entered Jordan legally or with the full knowledge of the Jordanian authorities in 2011, he expressed surprise and said this was a mistake. On this point I accept that he had no difficulty re-entering and departing from Jordan openly and 2011.
25. Of his family's socio-economic circumstances, he said that his father was a [vocation], and his parents owned their own home. Many of his siblings were working abroad. He said that he would describe his family as "a little bit better than poor".
26. Of his claim that people of Palestinian background face discrimination including in the areas of health, education, law enforcement and employment opportunities, he confirmed that he was not speaking about his own experiences but about Palestinians in general. Of his own experiences he referred to teachers when he was aged nine asking him where his grandparents were from. He expressed the view that these kinds of attitudes were not the fault of the people but of the government, which wanted to maintain divisions between Jordanians and people of Palestinian background in order to divide and rule.
27. He agreed that despite this he had attended university and gained a degree, but said he had been unable to get on to his preferred course because there were more university places allocated to Jordanians than Palestinians. He added that Jordanians were also preferred for government employment, volunteering that this was "not going to kill me, but it is discrimination" He said currently however there were bigger problems than discrimination and opportunities for jobs and so on, as the population had become more united against the government since the Arab Spring.
28. I put to him that his passport had been issued for a five-year period and contained a national number, according to which he was one of those Jordanian citizens of Palestinian background entitled to full access to services in Jordan.<sup>5</sup> He had completed a bachelor degree in Jordan, then worked in [vocation deleted] for two years before coming to Australia. He did not appear to have suffered any serious discrimination in Jordan. He responded by saying that Palestinians worked in the private sector where it was much easier for them, although the government was now trying to have more Jordanians favoured in that sector. He also said that the police treated Palestinians differently, even when they were simply caught speeding. He did not claim this had happened to him.
29. I accept, as was claimed by the applicant and confirmed in the US State Department's report, that in Jordan there is widespread discrimination against Jordanians of Palestinian background. However under the Refugees Convention an applicant must fear "persecution".

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<sup>5</sup> Fanack n.d., *Legal Position Palestinians* <http://fanack.com/countries/jordan/population/palestinian-and-iraqi-refugees/legal-position-palestinians/> accessed 15 March 2013, taken from original source: El-Abid, O. 2005, *Immobile Palestinians the Impact of Policies and Practices on Palestinians from Gaza in Jordan*, Badil Resource Center, p.93 [www.badil.org%2Fen%2Fdocuments%2Fcategory%2F20-research-papers%3Fdownload%3D589%253Aimmobile-palestinians-t&ei=PLA-UZHj4yekQWlxYCADg&usq=AFQjCNFBMBVLpLXo57jrwWMD4Um-5\\_48vQ&bvm=bv.43287494,d.dGI](http://www.badil.org%2Fen%2Fdocuments%2Fcategory%2F20-research-papers%3Fdownload%3D589%253Aimmobile-palestinians-t&ei=PLA-UZHj4yekQWlxYCADg&usq=AFQjCNFBMBVLpLXo57jrwWMD4Um-5_48vQ&bvm=bv.43287494,d.dGI)

Under s.91R(1) of the Act persecution must involve ‘serious harm’ to the applicant, and systematic and discriminatory conduct. Examples of ‘serious harm’ are set out in s.91R(2) of the Act. It sets out a list of the type and level of harm that will meet the serious harm test:

- (a) a threat to the person’s life or liberty;
- (b) significant physical harassment of the person;
- (c) significant physical ill-treatment of the person;
- (d) significant economic hardship that threatens the person’s capacity to subsist;
- (e) denial of access to basic services, where the denial threatens the person’s capacity to subsist;
- (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person’s capacity to subsist.

30. These examples all involve physical harm, or economic hardship of a level which threatens the person’s capacity to subsist<sup>6</sup>. However the list is not exhaustive<sup>7</sup>, and the serious harm test does not exclude serious mental harm, such as harm caused by the conducting of mock executions, or threats to the life of people very closely associated with the person seeking protection.<sup>8</sup>
31. The applicant does not claim to have experienced any serious harm. Although I accept he has not had opportunities that would have been available to him in Jordan if he were not of Palestinian background, such as tertiary studies of his choice or government employment, he has been able to gain a degree and to find employment in the private sector in Jordan. He has not suffered any serious hardship. I am satisfied that, if he were to return to Jordan, he may again face some discrimination because of his Palestinian background, which he has characterised as his race. However I find that, even if considered cumulatively, it would not amount to persecution.
32. As to whether the applicant’s Jordanian citizenship might be revoked, he does not claim that this might take place because of his Palestinian background, but because of a political opinion imputed to him as “Palestinian nonconformist” or agitator. This claim is therefore more appropriately considered below.

#### Political activism

33. The US State Department has observed, and I accept, that the most significant human rights problems in Jordan in 2012 were a) citizens’ inability to peacefully change their government, reflected throughout the year in weekly demonstrations calling for various political and economic reforms; b) mistreatment and allegations of torture by security and government

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<sup>6</sup> ‘Subsistence’ in s.91R(2) denotes ‘the ability to continue to exist or remain in being’ (*SZBQJ v MIAC* [2005] FCA 143 (Tamberlin J, 28 February 2005) at [11]) such that ‘the level of threat must be such as to challenge the ability of the individual to continue to exist or remain in being’: *SZIGC v MIAC* [2007] FCA 1725 (Greenwood J, 8 November 2007) at [23]. Furthermore, the hardship must be such that it would *actually* threaten the applicant’s capacity to subsist: see *MZYPB v MIAC* [2012] FMCA 226 (Turner FM, 30 March 2012) at [13] where the Court rejected the applicant’s argument that s.91R(2)(d) only required him to demonstrate a *threat* to his capacity to subsist (in that case because his business as a taxi driver would be diminished by the need to take more circuitous routes so as to avoid Taliban-controlled roads) and not an actual outcome of a reduction in his capacity to subsist.

<sup>7</sup> *Migration Legislation Amendment Act (No. 6) 2001*

<sup>8</sup> Revised Explanatory Memorandum to Migration Legislation Amendment Bill (No.6) 2001 at [25].

officials with impunity; and c) restrictions on freedom of expression that limited the ability of citizens and media to criticise government policies and officials.<sup>9</sup>

34. With regard to freedom of speech it observes that the law permits punishment of up to three years' imprisonment for insulting the king, slandering the government or foreign leaders, offending religious beliefs or stirring sectarian strife and sedition. During 2012 the government charged a number of activists with criticising the king, and a journalist was fired from his newspaper for criticising government officials. The government monitored speech on university campuses. In a February report an activist student group criticised university bylaws that banned partisan activities on campuses. In August the public prosecutor charged four people with undermining the ruling system, harming the king's dignity and defaming an official entity, based on a television interview in which they questioned the king's reform efforts. The charges remained pending at year's end.<sup>10</sup>
35. The report observes that in 2012 there were government restrictions on access to the internet. The government amended a law which requires the licensing and registration of online news websites, holds editors responsible for readers' comments on their websites, requires that website owners provide the government with the personal data of its users and mandates that editors in chief be members of the Jordan Press Association. Amendments to the law give authorities explicit power to block and censor websites. Human rights activists believed the law was not clear as to whether social media sites were subject to its provisions and that the law infringed on freedom of expression. According to journalists, security forces reportedly rang websites demanding the removal of some posted articles. The government monitored electronic correspondence and internet chat-sites. Individuals were unable to express their views freely via the internet, including by e-mail. The Ministry of Interior continued to monitor internet cafes via video cameras. The ministry also required cafe owners to register users' personal data, submit records of websites visited and prevent access to "targeted" web sites, as determined by the ministry.<sup>11</sup>
36. The applicant confirmed, as he had written in his statutory declaration to the Department, that since the inception of the Arab spring in January 2011 he had been actively expressing his opposition to the current Jordanian regime on social networking sites. Asked why, if he feared being harmed because he had expressed these views at that time, he had chosen to risk visiting Jordan for a month in July 2011, he said it was because he was not active in his own name and made comments on a site for which one did not need to log in. He said this site had since deleted all criticism, but in any case he had always used names other than his own.
37. As evidence of his blogging on social networking sites, which contained criticism of the regime, the applicant submitted printouts in Arabic and translations by an accredited translator of blogs in which he was identified under the pseudonym "[name]". According to the Department's written decision, he had undertaken to submit the earliest of his blogs. However the earliest items submitted was dated 21 May 2012, being five days after his protection visa application was lodged.

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<sup>9</sup> US Department of State's *2012 Country Reports on Human Rights Practices, Jordan*, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204367#wrapper>

<sup>10</sup> *ibid*

<sup>11</sup> *ibid*

38. Asked why he had submitted blogs under the pseudonym “[name]”, he said he had not wanted to get caught. He had used other pseudonyms such as “[name]”, “[name]”, “[name]” and “heaps of others”.
39. Asked if he had any evidence of any of his claimed political activity or expression prior to lodging his application for the protection visa, he said he did not. I told him it appeared to me he had only started blogging a few days after he applied for the protection visa, and I could infer he had done so solely to support his claim to need protection from persecution. In that case I was required to disregard it when considering if there was a real chance he would be persecuted if he returned to Jordan (see discussion below with regard to s91R(3) of the Act).
40. The applicant responded that when he went to [his agent] and told him he could not go back to his wife, [his agent] had advised him to continue writing on Facebook, as a result of which he had written these things in order to provide evidence in support of his case.
41. Of his Facebook page he said he had 700 friends, most of whom were not in Jordan. When he wrote his criticism of the government on it many had “dropped out of the page”.
42. He did not dispute that his name was not on any of the blogs he had submitted to the Tribunal. I told him this indicated he would face no consequences for having written them. He responded that he thought the authorities knew he was the author because someone had written on his Facebook page in Arabic that he would not say these things if he was in Jordan. However this person had not used his name.
43. Asked about [Mr A], who appeared to be the author of many entries on the Facebook page, the applicant said he was a Jordanian living in Saudi Arabia. The professional Arabic interpreter present, who advised that he was also a translator, did a sight translation of an entry dated [in] October 2012. It said  

[Details deleted].
44. One of the comments in response was from [Mr B]  

[Details deleted].
45. The applicant claimed to know this person, saying he thought he was from Jordanian intelligence. The basis for this belief was that the two had briefly met in Australia in 2008 or 2009 at English language class, and the way he “acted” made the applicant think he was from Jordanian intelligence. Asked, even if so, how this man could know it was the applicant’s Facebook page, the applicant said his words showed he knew that the owner of the Facebook page was in an English speaking country, and also talked about a colonised country.
46. The applicant confirmed however that his parents in Jordan had had no problems and had not been harassed by the authorities or anyone else in relation to the applicant.
47. As to why the applicant had waited so long after arriving in Australia to apply for a protection visa, he said he was about to go to university in Australia to do a Master’s degree but after being robbed had had to see a psychologist for eight months. After that he had met the woman who became his (now ex-) wife and had hoped to stay in Australia on a visa sponsored by her. He said he had not known about the protection visa until he met [his agent].



48. Invited to add anything further he wished, he said that 100 people had been kidnapped by Jordanian Intelligence, and there had been recent protests by their parents.
49. I discussed with him evidence that anti-government protests had been held in Jordan since January 2011, with protesters demanding political reforms and an end to high-level corruption.<sup>12</sup> This evidence indicated that protests have been largely peaceful<sup>13</sup>, although Amnesty International observed that the authorities ‘used excessive force and arrested hundreds of peaceful and other demonstrators’ in 2012.<sup>14</sup> Anti-government demonstrations were held in Amman on 6 January 2012 to mark the one-year anniversary of anti-government protests in Jordan.<sup>15</sup> Police were expected to deploy in large numbers to monitor the demonstration.<sup>16</sup> According to a *Press TV*<sup>17</sup> article, over 2,000 Jordanians marched to the Interior Ministry on 6 January 2012 to mark the protest anniversary and demand further political reforms.<sup>18</sup>
50. The applicant claimed that nevertheless no one was allowed to participate in a protest against the King. He said his preferred form of government in Jordan would be a multiparty democracy.
51. [The agent] made oral submissions in which he said that in the past two or three years since the Arab Spring, governments were wary of the use of blogging as a potent form of political expression and tried to silence it. It was true there had been hundreds of protests in Jordan, but there were ongoing concerns about kidnappings and mistreatment of protesters. People who were involved in protests or were bloggers risked being detained and mistreated.
52. He also said that he understood, in relation to the applicant’s conduct in Australia, the 91R(3) issue, but argued that the applicant still had real political motivations and concerns for his country. Even if the Tribunal disregarded his activities in Australia, if he returned to Jordan he would have to modify his behaviour in order to avoid harm. This amounted to persecution. Further, under the provisions of Complementary Protection his behaviour in Australia would have to be considered.
53. [The agent] also submitted that, although the applicant had full citizenship of Jordan, it was very risky to express dissent especially if one was of Palestinian background. Some had been targeted. If he continued to express his views he might lose his citizenship. This was also persecution. He also risked being deported if he was detained, particularly as he had been warned in 2005 not to participate in protest activity. Palestinians felt aggrieved because they were treated differently and the applicant may express his opinion under these circumstances.

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<sup>12</sup> ‘Jordanians mark protest anniversary’ 2012, *Press TV*, 6 January <http://www.presstv.com/detail/219669.html> accessed 15 July 2013; Amos, D & Bulos, N 2013, ‘In a rough neighbourhood, Jordan clings to its stability’, *NPR*, 1 July <http://www.npr.org/blogs/parallels/2013/07/01/196656296/stability-or-democracy-in-jordan-its-a-fragile-balance> Accessed 15 July 2013

<sup>13</sup> Amos, D & Bulos, N 2013, ‘In a rough neighbourhood, Jordan clings to its stability’, *NPR*, 1 July <http://www.npr.org/blogs/parallels/2013/07/01/196656296/stability-or-democracy-in-jordan-its-a-fragile-balance> accessed 15 July 2013

<sup>14</sup> Amnesty International 2013, *Annual Report*, 23 May, p.142 <http://www.amnesty.org/en/region/jordan/report-2013> accessed 15 July 2013

<sup>15</sup> 2012, *Press TV*, op. cit.

<sup>16</sup> Embassy of the United States Jordan 2012, *Planned demonstrations – 6 January 2012*, 5 January [http://jordan.usembassy.gov/wm\\_010512.html](http://jordan.usembassy.gov/wm_010512.html) accessed 6 January 2013

<sup>17</sup> Fathi, N. 2007, ‘Iran expands role in media, via satellite and in English’, *The New York Times*, 2 July [http://www.nytimes.com/2007/07/03/world/asia/03iht-web0703iran.6459744.html?\\_r=0](http://www.nytimes.com/2007/07/03/world/asia/03iht-web0703iran.6459744.html?_r=0) accessed 15 July 2013

<sup>18</sup> 2012, *Press TV*, op. cit.

54. I accept that the applicant would prefer Jordan to be a multiparty democracy. However for the following reasons I am not satisfied that he holds these views to the extent that he would wish to express them if he returned to Jordan.
55. I note that he claims to have been expressing his political opinions online since January 2011. I do not accept that he has done this. In part that is because there is no evidence at all of this beyond his own assertions. Also he willingly re-entered Jordan six months after, according to him, he commenced expressing his views online, albeit under other names. He does not claim to have been involved in any political activity in Jordan at that time. There is also nothing to confirm that “[name]” is in fact a pseudonym of the applicant. Even if it is, I do not consider his assertions about more long-standing online political activity reliable because the only evidence of his expressing his views online is dated at its earliest almost 4 years after his arrival in Australia and several days after he applied for the protection visa.
56. I consider his claim to have had some contact with a person from Jordanian intelligence in 2008 or 2009 to be fanciful, and am certainly not satisfied that the person who wrote a response to “[name]” was either this person, or another person who knew the applicant’s identity. I am not satisfied that anyone in Jordan regards the applicant as the source of online comments critical of the government.
57. It is plausible that the applicant participated in a few protests while a university student up to [year], and that he was briefly detained along with numerous other students on one occasion in 2005. However the Jordanian authorities have shown absolutely no interest in his political opinions or activities since 2005, either during the three further years he remained in Jordan or when he returned there in 2011. His family have not been questioned about him at any time. He was also issued with a passport in 2008. All of this indicates that if he returned to Jordan he would be of no interest to the authorities because of a dissident political opinion imputed to him.
58. It is well-established that requiring an applicant to live discreetly is wrong and irrelevant to the task of determining refugee status. Where an applicant has acted in the way he or she did only because of the *threat* of harm, the well-founded fear of persecution held by the applicant is the fear that unless he or she acts to avoid harmful conduct, he or she will suffer harm. In these cases, it is the *threat* of serious harm with its implications that constitutes the persecutory conduct. To determine the issue of real chance in such a case without determining whether the modified conduct was influenced by the threat of harm is to fail to consider the issue properly. To properly deal with the question of persecution the decision-maker will need to consider why an applicant has acted or will act discreetly; and what would happen to the applicant if s/he did not act discreetly. However, it is important to ascertain the importance that the asylum-seeker places upon the exercise of that particular right.<sup>19</sup>
59. In the present case I am not satisfied that the applicant expressed any political opinions for four years after his arrival in Australia, after he applied for the protection visa, despite being able to do so in safety. I consider this inaction to be a reliable measure of his wish to express his political opinions, and am therefore far from persuaded that he places such importance on the exercise of the right to express his political opinions that it would be the threat of serious harm that prevented him from expressing them if he returned to Jordan.

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<sup>19</sup> *Win v MIMA* [2001] FCA 132 (Madgwick J, 23 February 2001) at [15].

60. As to his claim that his Jordanian citizenship might be revoked because they have imputed, or will impute, him with a political opinion, I accept that the revocation of citizenship may amount to persecution if done for a Convention reason. However having made the above findings I am not satisfied that the authorities perceive him to have been expressing any anti-government or anti-monarchy political opinions while in Australia. The applicant also does not claim that the authorities have indicated their intention to revoke the citizenship in his case. He also indicated that the Tribunal hearing that he expected his Jordanian passport to be renewed on request. There is thus no indication that the authorities have any intention of revoking his citizenship. I am not satisfied that the applicant might lose his Jordanian citizenship in the reasonably foreseeable future.
61. s.91R(3) of the Act provides that any conduct engaged in by an 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. In the present case the applicant confirmed to me at the Tribunal hearing that the reason he wrote on Facebook after applying for the protection visa was in order to support his application as a refugee. I am satisfied that, if he is indeed the person writing under the student him “[name]”, that was the sole purpose for his doing so. Even if he had not said this I would not be satisfied that he engaged in this conduct otherwise than for the purpose of strengthening his claim to be a refugee. Therefore I have disregarded this conduct.
62. If the applicant returns to Jordan he will do so as a citizen to whom the authorities have not imputed any anti-government or anti-monarchy political opinions. Therefore, for the reasons given above, the chance is remote that he will be subjected to treatment amounting to persecution for the Convention reason of political opinion.
63. The applicant does not have a well-founded fear of being persecuted for a Convention reason in Jordan.

#### Complementary Protection

64. As noted above the Complementary Protection criteria require that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, in this case Jordan, there is a real risk that he will suffer significant harm. The ‘real risk’ test imposes the same standard as the ‘real chance’ test applicable to the assessment of ‘well-founded fear’ in the Refugee Convention definition: *MIAC v SZQRB* [2013] FCAFC 33.
65. ‘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 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.
66. The applicant confirmed that he solely feared being discriminated against because of his Palestinian background and feared being harmed because of his criticism of the regime since the Arab spring in January 2011.

67. Even if the applicant made comments online critical of the Jordanian government or monarchy, as he claims, he has stated unequivocally that he never used his own name and always used a pseudonym. There is much evidence that the Jordanian authorities are very concerned about limiting the expression of political opinions online, and I accept that to be the case. However there is no evidence that they perceive the applicant to have been the source of any such political expression. For this reason I am satisfied there are no substantial grounds for believing that, as a necessary and foreseeable consequence of his being returned to Jordan, there is a real risk he will suffer significant harm because of his claimed criticism of the regime.
68. As to his fears relating to his Palestinian background, he has not expressed a fear, and I am not satisfied, that he will be arbitrarily deprived of his life, or the death penalty will be carried out on him, or that he will be subjected to torture, or to cruel or inhuman treatment or punishment or to degrading treatment or punishment for this reason.
69. I find there are no substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Jordan, there is a real risk that he will suffer significant harm for any reason. Therefore the applicant does not meet the criteria under Complementary Protection.
70. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore he does not satisfy the criterion set out in s.36(2)(a).
71. Having concluded that he does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa), and is not satisfied that he is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
72. 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 he does not satisfy the criterion in s.36(2).

## **DECISION**

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