

1204480 [2012] RRTA 1071 (29 November 2012)

DECISION RECORD

RRT CASE NUMBER:	1204480
DIAC REFERENCE:	CLF2011/106649
COUNTRY OF REFERENCE:	Jordan
TRIBUNAL MEMBER:	Jennifer Ellis
DATE:	29 November 2012
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Jordan, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] July 2011.
3. The delegate refused to grant the visa [in] March 2011, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZF DV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Background

20. The applicant is a single [age deleted: s.431(2)] year old female citizen of Jordan who was born in [date deleted: s.431(2)] in Amman, Jordan. The applicant's father resides in Libya, her mother in Qatar and she has no siblings.
21. The applicant travelled to Australia on a Jordanian passport issued in April 2011 and entered Australia [in] June 2011 as the holder of a Subclass 676 visa that had been granted [in] May 2011 and gave her stay [until] September 2011.

Protection Visa Application

22. The applicant lodged her application for a protection visa [in] July 2011.
23. In her application the applicant stated that she is an Arab Christian. She said that she completed 16 years of education, including study at the University of Jordan in Amman. She had worked as an air hostess for [name deleted: s.431(2)] airlines and another airlines in

Jordan from 2006 until 2008 and then as a waitress in Lebanon. She had studied in the USA from August 2010 to February 2011.

24. In her statement she stated that she was born to a Christian father and a Muslim mother. Her father had to convert to Islam to be able to marry her mother. When she was four her parents divorced and her mother left. Her father was granted full custody and she was brought up by her paternal grandparents who raised her as a Christian. In 1991 she was baptised in Jordan. However as she was registered as a Muslim she cannot change her civil registration in Jordan.
25. She stated that she experienced discrimination and rejection from an early age and her father took her to an orphanage in Syria for Christian children. A year later her father took her back to Jordan and then later her aunt returned her to the monastery. She later found out that her father went to prison. Later her father put her in an Anglican school in Damascus where she remained for 2 years. She was arrested when she was in year 9 because her father was arrested. Later she returned to live with her grandparents in Jordan.
26. Between the ages of 14 and 22 she was a Christian in the eyes of her father's family and a Moslem in the eyes of the community, her mother's family and the government. She was forced to study Islam at school.
27. After Year 12 she was sent to [University] in [location deleted: s.431(2)] which is fanatically Moslem and she was humiliated for being a Christian. She was also assaulted by her maternal uncle.
28. In 2005 her father was released from prison in Syria and returned to Jordan. He beat her because she reminded him of her mother. She dropped out of university and worked with the Airlines.
29. In September 2009 she went to a priest at a church in Lebanon and he sent her to a house owned by an old Christian woman. Her father followed her there and threatened to kill her. She remained there for one year.
30. She went to study in the USA in August 2010 and worked as a hotel cleaner. Her health deteriorated so she returned to Lebanon in February 2011. Then her aunt invited her to Australia.
31. She cannot return to Jordan because of the social isolation and discrimination and threats from her mother's family. The State authorities won't protect her.
32. Documents submitted with her application included:
 - Letter from [the Father] of the Greek Catholic Church stating that the applicant has suffered from social and financial circumstances knowing that her mother was divorced since childhood and her father is imprisoned in Syria. She lives with her paternal grandparents and has no support;
 - University documents;
 - Country information in relation to apostasy in Jordan and the fact that conversion from Islam is prohibited in Jordan;

- Copies of the applicant's Personal ID card and Birth certificate which states that her religion is Moslem;
- [Psychological Report] [dated] February 2012 stating that she has seen the applicant for regular counselling sessions [since] October 2011. She states that the applicant has led a disrupted life and is emotionally fragile and suffers a high degree of anxiety and depression. As a devout Christian she fears that she is not safe in Jordan;
- Statutory declaration from the [applicant's second cousin] stating that he lived in Jordan until he migrated to Australia in 2005. He is aware of her strong dedication to Christianity and is an active member of the Church. She has attempted to change her identity documents to state her religion as Christian but is unable to do so as it would be regarded as apostasy. She initially lived with her aunt in Australia but was forced to leave and then lived with him until she moved to Melbourne. He sent her to the [Church] for moral support; and
- Statutory declaration from the applicant detailing her claims. She described how in 2008 she reported a man who touched her to police and then was arrested for failure to pay rent. She was harassed by the police officers who were Muslim fundamentalists and badly mistreated.

Interview

33. [In] March 2012 the applicant was interviewed by the delegate. The Tribunal has listened to the interview.

Primary Decision

34. [In] March 2012 the delegate refused the application. The delegate found that the applicant was not a person to whom Australia had a protection obligation. The delegate disregarded the applicant's claims to have feared harm before she travelled to the USA in August 2010 on the basis that she had not sought protection there. She found her not credible and did not accept that she was Christian or had been subject to persecution for religious related reasons in Jordan.

Application for Review

35. [In] April 2012 the applicant lodged an Application for Review of the delegate's decision. A copy of the delegate's decision was submitted by the applicant with the review application. The matter was constituted to the Presiding Member [in] June 2012.
36. By letter [dated] July 2012 the Tribunal wrote to the applicant stating that it had considered the information before it in relation to her claims and was unable to make a favourable decision on this information alone. As a consequence the applicant was invited to appear before the Tribunal [in] August 2012 to provide additional information and present oral arguments about her claims.
37. [In] August 2012 the Tribunal received the following evidence:
- Letter from [the Father] parish priest of [a Catholic Parish] stating that the applicant has suffered persecution as a Christian in Jordan and that her legal

documents state that she is a Moslem. The Church supports her and she will be a part of the fortnightly Ladies Group;

- Letter from [Father], Martyrs of Jordan Church stating that the applicant was baptized as a Christian but according to Jordanian law she is registered as Moslem and cannot change her legal situation; and
- Reports [dated] February 2012 from the Asylum Seeker Resource Centre stating that she has engaged with the Health Program there since September 2011.

Evidence at the hearing [in] August 2012

38. The applicant appeared before the Tribunal [in] August 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
39. The applicant was represented in relation to the review by her registered migration agent.
40. The applicant told the Tribunal that she suffered from both physical and psychological problems and was undergoing regular counselling. She had an aunt and a second cousin in Australia. She had heard that her father lived in Libya or Lebanon and her mother in Qatar. She has no siblings.
41. The applicant told the Tribunal that she had last lived in Jordan in 2009. After that she had lived in the USA and Lebanon before she came to Australia in June 2011.
42. The Tribunal queried her residency status in Lebanon and she said that she had to apply for a tourist visa to go to Lebanon and that it had to be renewed every 3 months and there was no guarantee of renewal. She was not allowed to live in Lebanon indefinitely and not allowed to work or study. She did not wish to live in Lebanon because her father often lived there and he had a mental problem and wanted to kill her.
43. The applicant outlined her education in Lebanon, Syria and Jordan and her university education in Jordan. She had difficulties attending a Moslem University in Jordan and was unable to complete her studies.
44. After leaving university she obtained employment with [name deleted: s.431(2)] Airlines and flew internationally with them from 2006 to 2008. She also worked for a small private airline. She moved to Lebanon in August or September 2009 because she could not live in Jordan as a Christian. The Tribunal asked her why she could not continue to live in Lebanon now and she said that her father lives there and she is not safe there and it is not her country.
45. The Tribunal asked the applicant why she could not return to Jordan and she said that she was scared of her mother's relatives who wanted to kill her. She said that in the past she had been protected by her grandparents but that was not the case now. She said she was unable to live as a Christian in Jordan and could not change her religion on her papers. As her papers stated that she was a Moslem she could not marry a Christian man or live as a Christian.
46. The applicant told the Tribunal that she was in the USA from August 2010 to February 2011. She was granted a visa to work in hospitality there. The Tribunal asked her why she did not apply for asylum there and she said that she had no knowledge of how to and that Americans

changed the way they treated Arabs after 9/11. The Tribunal put to her that this seemed inconsistent with her having a well-founded fear of persecution in Jordan.

47. The applicant claimed that she did not come to Australia to seek asylum as she thought her aunt could sponsor her here but then her aunt changed her mind and kicked her out and she stayed with her second cousin but he could not support her. She found a lawyer over the internet who made the application for her. However he had made mistakes in her application for a protection visa and these had been amended by her new lawyer.
48. The Tribunal asked the applicant what difficulties she had suffered in Jordan as a result of being a Christian and she stated that she was always scared about wearing a cross and going to Church. Her biggest problem was that she could not marry a Christian and said she cannot live as a Christian in Jordan because her papers wrongly stated that she is a Moslem. She stated that she was able to attend Church in Jordan but sometimes she feared to go because she could not live freely.
49. The Tribunal put to the applicant that she had received education in Jordan, including going to university and been able to be employed and work internationally; it asked her how she had suffered serious harm in Jordan and she stated that her uncle beat her when she was at university. She had experienced harm from her mother's family and she said that the laws of Jordan harmed her because she cannot marry a Christian man.
50. Her agent then submitted that in Jordan her ID card stated her religion as Moslem and it could not be officially changed. She could not marry a Christian or bring up her children as Christian and her ID card has to be shown everywhere and it states that she is Moslem. She can never live life as a Christian with full civil rights.
51. At this point the Tribunal stopped the hearing as the applicant became quite distressed. The Tribunal explained that it also wished to undertake further research before the hearing would be resumed.
52. [In] August 2012, the Tribunal made a request to the Department of Foreign Affairs and Trade (DFAT) in relation to this applicant.
53. [In] October 2012, DFAT advised the Tribunal that the post had provided the following information:

Is it possible for a person to change their religion on a Jordanian identity card- what is the process?

If a Jordanian citizen, male or female, changes their religious belief from Islam to another religion they are not able to change the wording of religion recorded on their official papers. Christian males or females when converting to Islam can change the name of their religion on official documents from Christian to Muslim.¹

What is the process for registering a marriage in Jordan - are couples required to show identity cards?

DFAT also provided the following information regarding proof of nationality documents required for marriage registration:

¹ Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1441 – Jordan: RRT Information Request JOR40926*, 17 October <Attachment>

Nationality is proven by either identity card, passport, birth certificate, marriage certificate or family book.²

Is a Jordanian Muslim woman permitted to marry a Christian man?

DFAT advised that a Jordanian Muslim woman is not permitted to marry a Christian man:

It is not permissible for a Muslim women to marry a Christian man under Islamic law in Jordan. There is no Christian personal law in Jordan.³

There is no legal provision for civil marriage in Jordan.⁴

Evidence at the hearing [in] November 2012

54. The hearing was resumed [in] November 2012 and the Tribunal took further evidence from the applicant and from [the witness]. 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 her registered migration agent.
55. The Tribunal put to the applicant that it accepted her claims but had some doubts that she had suffered serious harm as a result of her Christianity or that she would do so in the foreseeable future. The applicant stated that she had suffered as a result of being a Christian but having her identity documents state that she is a Moslem. She described in more detail how she had been assaulted by police because of this. Given the nature of this evidence the Tribunal has decided to not detail this evidence in the decision.
56. [The witness] told the Tribunal that she was the applicant's case worker at the Asylum Seeker Resource Centre and that the applicant was regarded as a complex case. She had been her case worker for about a year. She stated that in countries such as Jordan which had been regarded as secular, there was a creeping fundamentalist Moslem movement creeping in and that a woman could not change her religion on her identity cards or birth certificate. She said that in her opinion the applicant has suffered from torture and trauma and requires a lot of counselling. She was in a very fragile emotional and mental state and required a level of protection. She said that in countries such as Jordan the family is everything and a single female without family protection is at considerable risk. This was particularly so when the applicant's identity documents stated that she was a Moslem when in fact she was a practising Christian. Any attempt to change her documents would attract severe prosecution as she would be regarded as converting to Christianity. She stated also that it was understandable that the applicant did not seek to apply for asylum in the USA given their attitudes towards Arabs.
57. At the conclusion of the hearing the applicant's migration agent submitted that the applicant feared persecution both for the Convention ground of religion and as the member of a particular social group, namely single women in Jordan.

² Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1441 – Jordan: RRT Information Request JOR40926*, 17 October <Attachment>

³ Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1441 – Jordan: RRT Information Request JOR40926*, 17 October <Attachment>

⁴ US Department of State 2012, *International Religious Freedom Report 2011*, 30 July, Section II <Attachment>

Country information

58. The US Department of State 2011 Report on International Religious Freedom in relation to Jordan states that:

Executive SummaryShare

The constitution and other laws and policies provide for religious freedom and, in practice, the government generally respected religious freedom, with some exceptions. The government did not demonstrate a trend towards either improvement or deterioration in respect for and protection of the right to religious freedom. The constitution stipulates that the state religion is Islam, but provides for the freedom to practice the rites of one's religion and faith in accordance with the customs that are observed in the kingdom, unless they violate public order or morality. The constitution notes that the king must be Muslim and the government accords primacy to Sharia (Islamic law). The constitution also stipulates that there shall be no discrimination in the rights and duties of citizens on grounds of religion; however, the government's application of Islamic law infringes upon some of the religious freedoms laid out in the constitution. Members of unrecognized religious groups face legal discrimination. The government continued to monitor members of the Baha'i Faith, a few Muslim converts to Christianity, and some citizens and foreign residents suspected of proselytizing Muslims. In the case of converts, this sometimes included attempts by the government to induce them to convert back to Islam. Conversion from Islam is not permitted under Islamic law, and any such converts risk the loss of civil rights. Security services continued nonintrusive monitoring of Christian churches and leaders for security reasons; this was generally welcomed by Christians.

There were reports of societal abuses or discrimination based on religious affiliation, belief, or practice. While relations between Muslims and Christians generally were peaceful, adherents of unrecognized religions and Muslims who converted to other religions faced societal discrimination and the threat of mental and physical abuse by their families, government officials, and at times community members.

The ambassador and other U.S. government officials discussed religious freedom with the government as part of active and ongoing efforts to promote human rights. In addition, the embassy supported a number of exchange and outreach programs that facilitated religious tolerance.

Section I. Religious DemographyShare

Approximately 95 percent of the population is Sunni Muslim. Estimates of the number of Christian citizens vary from 1.5 to 3 percent of the population. Shia Muslims, Baha'i, and Druze constitute an estimated 2 percent of the population.

Officially recognized Christian denominations include the Greek Orthodox, Roman Catholic, Greek Catholic (Melkite), Armenian Orthodox, Maronite Catholic, Assyrian, Coptic, Anglican, Lutheran, Seventh-day Adventist, and Presbyterian churches. Christian churches not officially recognized but registered as "societies" include the Free Evangelical Church, Nazarene Church, Assemblies of God, Christian and Missionary Alliance, and The Church of Jesus Christ of Latter-day Saints (Mormons). Unrecognized Christian denominations not registered as "societies" include United Pentecostal and Jehovah's Witnesses. There are Chaldean and Syriac Christians among the Iraqi refugee population, referred to as "guests" by the

government. The Baptist Church is registered as a “denomination,” but does not enjoy the full privileges of other registered denominations in the country. The government does not recognize the Baha’i Faith as a religion.

Section II. Status of Government Respect for Religious FreedomShare

Legal/Policy Framework

The constitution and other laws and policies protect religious freedom and, in practice, the government generally respected religious freedom. The constitution provides for the freedom to practice the rites of one’s religion and faith in accordance with the customs that are observed in the kingdom, unless they violate public order or morality. The constitution further stipulates there shall be no discrimination in the rights and duties of citizens on grounds of religion; however, the constitution also notes the state religion is Islam and the king must be Muslim.

The constitution also provides that matters concerning personal status, such as religion, marriage, divorce, child custody, and inheritance, are under the exclusive jurisdiction of religious courts. Muslims are subject to the jurisdiction of Islamic law courts, which apply Islamic law adhering to the Hanafi school of Islamic jurisprudence, except in cases that are explicitly addressed by civil status legislation. Matters of personal status of non-Muslims whose religion is recognized by the government are under the jurisdiction of denomination-specific tribunals of religious communities, as outlined in the constitution. During the year, there were three tribunals, one each for Catholics, Greek Orthodox, and Anglicans, which oversaw their denominations’ respective religious courts. Members of Protestant denominations registered as “societies” must use the recognized Anglican tribunal. There are no tribunals for atheists or adherents of unrecognized religions, such as the Baha’i Faith. Such individuals must request that one of the recognized courts hear their personal status cases. There is no legal provision for civil marriage or divorce. Members of religious groups that have no legally recognized religious divorce sometimes converted to another Christian denomination or to Islam in order to divorce legally.

Islamic law governs all matters relating to family law involving Muslims or the children of a Muslim father. All citizens, including non-Muslims, are subject to Islamic legal provisions regarding inheritance if no equivalent inheritance guidelines are codified in their religion or if their religion does not have official state recognition. Minor children of male citizens who convert to Islam are considered Muslims. Adult children of a male who has converted to Islam become ineligible to inherit from their father if they do not also convert to Islam.

The head of the department that manages Islamic law court affairs (a cabinet-level position) appoints Islamic law judges, while each recognized non-Muslim religious community selects the structure and members of its own tribunal. All judicial nominations must be approved by the prime minister and commissioned officially by royal decree.

Neither the constitution, the penal code, nor civil legislation bans conversion from Islam or efforts to proselytize Muslims. However, the government prohibits conversion from Islam in that it accords primacy to Islamic law, which governs Muslims’ personal status and prohibits them from converting. This practice contradicts the constitution’s religious freedom provisions. The government freely allows conversion to Islam and from one recognized non-Islamic faith to another.

As the government does not allow conversion from Islam, it also does not recognize converts from Islam as falling under the jurisdiction of their new religious community's laws in matters of personal status; rather, converts from Islam are still considered Muslims. In general under Islamic law, these converts are regarded as apostates, and any member of society may file an apostasy complaint against them. In cases decided by an Islamic law court, judges have annulled converts' marriages, transferred child custody to a non-parent Muslim family member, conveyed an individual's property rights to Muslim family members, deprived individuals of many civil rights, and declared non-Muslim minors as "wards of the state" and without any religious identity.

On January 21, 2009, the cabinet officially recognized the Council of Church Leaders as the government's advisory body for all Christian affairs. The council consists of the heads of the country's 11 officially recognized Christian churches and serves as an administrative body to facilitate official Christian matters, including the issuance of work permits, land permits, and marriage and birth certificates, in coordination with government ministries, departments, and institutions. Unrecognized Christian denominations, despite not having full membership on the council, also must conduct business with the government through the council. During the year, concerns continued over the council's capacity to manage all Christian affairs effectively and fairly.

Christians have served regularly as cabinet ministers, and in October the king appointed five Christians to the upper house of parliament. Of the 120 seats of the lower house of parliament, nine are reserved for Christians. Christians are prohibited from running outside of these designated seats. No seats are reserved for adherents of other minority religious groups. The government classification of Druze as Muslims permits them to hold office.

The government traditionally reserves some positions in the upper levels of the military for Christians, anecdotally estimated at about 4 percent; however, all senior command positions are held by Muslims. Division-level commanders and above are required to lead Islamic prayer on certain occasions. While there were only Sunni Muslim chaplains in the armed forces, Christian and Shia Muslim members of the armed forces are not prohibited from practicing their religion.

The Press and Publications Law prohibits the publication of media items that slander or insult "founders of religion or prophets" or that are deemed contemptuous of "any of the religions whose freedom is protected by the constitution" and imposes a fine of up to 20,000 dinars (\$28,000).

Religious institutions must be accorded official recognition through application to the prime minister's office to own land and administer rites such as marriage. This requirement also would apply to schools administered by religious institutions. Some groups remain officially unrecognized.

In the case of Christian groups, the prime minister confers with the Council of Church Leaders on the registration and recommendation of new churches. The government also refers to the following criteria when considering recognition of Christian churches: the group must not contradict the nature of the constitution, public ethics, customs, or traditions; the Middle East Council of Churches must recognize it; the faith must not oppose the national religion; and the group must include some citizens of the country.

The Ministry of Awqaf (religious endowments) and Islamic Affairs manages Islamic institutions and the construction of mosques. It also appoints imams, provides mosque staff salaries, manages Islamic clergy training centers, and subsidizes certain activities sponsored by mosques. The government monitors sermons at mosques and requires preachers refrain from political commentary that the government believes could instigate social or political unrest. Imams who violate these rules face fines and a possible ban from preaching.

Recognized non-Islamic religious institutions do not receive subsidies; they are financially and administratively independent of the government and are tax-exempt. Groups registered as “societies” rather than denominations are subject to the 2008 Law on Associations that requires government approval of a group’s budget, approval of foreign funding, and notification of the group’s by-laws and board members in addition to other administrative restrictions. The Free Evangelical Church, the Church of the Nazarene, the Assemblies of God, and the Christian and Missionary Alliance are registered with the Ministry of Justice (MOJ) as “societies” and are subject to the law’s restrictions. The Baptist Church, which is registered as a “denomination” with the Ministry of Interior, and other groups registered as “churches” with the MOJ are not subject to the associations law.

Although the government does not recognize the Druze religion, it does not prohibit its practice. The Druze did not report official discrimination. On national identity cards and “family books,” which normally identify the bearer’s religious community, the government records Druze as Muslims. The government does not officially recognize the Druze temple in Azraq; four social halls belonging to the Druze are registered as “societies.”

The Baha’i Faith also is not recognized by the government, and Baha’is face official discrimination. On national identity cards and family books, the government records Baha’is as Muslims, leaves the space blank, or marks it with dashes. This action has implications under Islamic law for the legality of certain marriages, as a woman registered as Muslim is not permitted to marry a non-Muslim man; thus a Baha’i man with no officially noted religion could be prevented from marrying a Baha’i woman who has been erroneously registered as Muslim. The Baha’i community does not have its own court to adjudicate personal status matters; such cases may be heard in courts governed by Islamic law or other recognized religious courts upon request. The Department of Civil Status and Passports does not officially recognize marriages conducted by Baha’i assemblies, but it does acknowledge these marriages for the purpose of updating personal information in passports. Additionally, the child of a non-Muslim father and a Baha’i mother registered inaccurately as a Muslim is considered illegitimate under Islamic law. These children are not issued a birth certificate and subsequently are unable to receive citizenship or register for school. The government does not officially recognize Baha’i schools or places of worship. There are two recognized Baha’i cemeteries, but the cemetery in Adasieh is registered in the name of the Ministry of Awqaf and Islamic Affairs, despite requests to register it under the Baha’i Faith.

Public schools provide Islamic religious instruction as part of the basic national curriculum, although Christian students are allowed to leave the classroom during these sessions. However, Christian students in private and public schools must learn verses from the Qur’an and Islamic poetry in both Arabic and social studies classes in preparation for mid-year and end-of-year exams written by the Ministry of Education. The constitution provides congregations the right to establish schools to educate their communities, “provided that they comply with the general provisions of the law and are subject to the control of government in matters relating to their curricula and

orientation.” In several cities, Christian denominations operate private schools that are open to adherents of all religions, such as the Baptist, Orthodox, and Latin schools, and they are able to conduct Christian religion classes.

Employment applications for government positions occasionally contain questions about an applicant’s religion. Religious affiliation is required on national identification cards and legal documentation, including on marriage and birth certificates, but not on travel documents such as passports.

Atheists and agnostics must associate themselves with a recognized religion for purposes of official identification.

The government observes the following religious holidays as national holidays: the Birth of the Prophet Muhammad, the Prophet’s Ascension, Eid al-Fitr, Eid al-Adha, the Islamic New Year, Christmas, and the Gregorian calendar New Year. Christians traditionally are given leave from work on Christian holidays approved by the Council of Church Leaders, such as Palm Sunday and Easter.

Government Practices

There were reports of abuses of religious freedom.

During the year, a few converts from Islam to Christianity reported being summoned and questioned by security service officers after family members complained to authorities about the conversion. Security services personnel reportedly questioned their beliefs, threatened court and other actions, and offered rewards to them for denouncing the conversion, such as employment opportunities. These converts also reported that security service personnel withheld certificates of good behavior required for job applications or to open a business and told employers to fire them.

There were no reports that the practice of any faith was prohibited, but some government actions impeded the activities of some Muslim and non-Muslim groups. Some religious groups, while allowed to meet and practice their faith, faced official discrimination. In addition, not all Christian denominations have been accorded legal recognition.

Some Baha’i children continued to face difficulty in obtaining birth certificates, which are required to register for school and to receive citizenship.

During the year, churchgoers continued to note the presence of security officers in civilian clothes outside churches of some Christian denominations. Church leaders stated that security officials have continued their monitoring of church services, but characterized this as an attempt to provide better protection following threats against Christian groups in the region. Some religious leaders also reported being summoned by the security services for questioning on their church’s activities and church membership, although most characterized these encounters as civil.

Fewer religious leaders reported the sporadic denial of visas to foreign adherents coming to the country to attend workshops and conferences than during the previous year. Religious leaders reported that they and other congregants sometimes were questioned by the security services during travel in and out of the country, including occasional attempts to convert them to Islam. There were also anecdotal reports among the Iraqi refugee community of similar questioning by security services.

In 2009 the court of first instance charged a literary figure with defamation of Islam, and sentenced him to fines and time in jail. At the end of 2010, he was freed on bail pending an appeal of the court's ruling. On June 8, the government dropped the charges as part of a general pardon.

In 2010 an apostasy case was brought to the Amman Islamic law court by the brother of a citizen who converted from Islam to the Baha'i Faith. The case was initiated in March 2007. The 56-year-old defendant converted when he was 19, and there appeared to be no statute of limitations. The case was postponed on several occasions in 2009, 2010, and 2011 because both the convert and the witnesses failed to appear. At year's end, the defendant still faced charges; however the trial was postponed to the following year.

The government did not respond publicly to anti-Semitic material in the media.

Section III. Status of Societal Respect for Religious FreedomShare

There were reports of societal abuses or discrimination based on religious affiliation, belief, or practice. Some religious groups, such as the Bahai's, while allowed to meet and practice their faith, faced some societal discrimination.

Some Muslims who converted to other religions reported facing social ostracism, threats, and physical and verbal abuse from their families and Muslim religious leaders. In recent years some family members of converts have filed apostasy charges against them in Islamic law courts, which have led to convictions depriving them of civil rights, including annulment of their marriage contracts and loss of custody of their children. Citizens reported that interfaith romantic relationships have led to ostracism and, in some cases, feuds between members of the couple's families and violence toward the individuals.

In the media, editorial cartoons, articles, and opinion pieces sometimes conflated anti-Israel sentiment with anti-Semitic sentiment, depicting negative images of Jews without public government response. In November the daily *Al-Arab Al-Yawm* published a column in which the writer blamed the Jews for causing all the conflicts in the world.

The national school curriculum, including materials on tolerance education, did not include mention of the Holocaust despite urging from the U.S. government to include it.

Section IV. U.S. Government PolicyShare

The U.S. government promoted religious freedom with the government as part of its overall policy to promote human rights. The ambassador and other U.S. embassy officials raised religious freedom issues with government authorities on many occasions through formal inquiries and discussions with both working-level contacts and high-ranking officials. Embassy officers met frequently with members of the various religious and missionary communities, as well as with private religious organizations and interfaith institutions.

The embassy continued to send national religious scholars, teachers, and leaders to the United States on exchange programs designed to promote tolerance and a better understanding of religious freedom as a fundamental human right and source of stability.

In November the embassy hosted Imam Mohamad Basher Arafat, president of the Islamic Affairs Council of Maryland. He spoke on “Interfaith Dialogue and Mutual Understanding” at several universities, to imams, and to the media.

In April the embassy organized a program entitled “Voices of Religious Tolerance,” which is designed to counter extremist voices in Afghanistan. The program brought approximately 50 selected Afghans to Jordan in order to attend programs to promote concepts of religious tolerance, plurality, and interreligious dialogue. The week-long program provided religious exposure to Afghans and other Muslims through excursions to religious landmarks and a series of lectures and classes given by Islamic scholars.

FINDINGS AND REASONS

59. Based upon her Jordanian passport, and her oral evidence, the Tribunal finds that the applicant is a citizen of Jordan and that she is outside that country. Accordingly, the Tribunal will assess her claims to refugee status against that country.
60. The Tribunal notes that there is some evidence before it to suggest that the applicant may have the right to enter and reside in Lebanon. This then raises the issue of whether Lebanon can be considered a safe third country for the purposes of s.36 (3) of the Act or of Article IE of the Convention.
61. Current authority indicates that the right referred to in s.36 (3) must be an existing right, and not a past or lapsed right, or a potential right or expectancy. What s.36(3) requires is an existing legally enforceable right to enter *and* reside. In *N1045/00A v MIMA* ([2001] FCA 1546 (2 November 2001) at [30]-[32]), Lee J held that the “right” in s.36(3) is more than an opportunity to seek the favourable exercise of a discretion. It must mean, at least, a degree of certainty in an applicant’s circumstances that arises out of an entitlement exercisable by the applicant. Moreover, if the right to enter and reside in a country is premised on the desire of a person to invoke that right, it should not be regarded as an existing right but rather a conditional or contingent right: *MZXL v MIAC* [2007] FMCA 799 (McInnis FM, 29 May 2007) at [102].
62. The Tribunal has had regard to the information in the visa application form in which the applicant writes that she was born in Amman, Jordan. However she has lived for some time in Lebanon and her father has also lived there.
63. The Tribunal observes that the applicant travelled to Australia on a Jordanian passport and is not a citizen of Lebanon or any other country. Moreover, having carefully considered the material before it, the Tribunal finds that the right the applicant has to enter Lebanon and reside there is one that relies on the discretion of the Lebanese government. Following the decision of Lee J in *N1045/00A v MIMA*, the Tribunal finds that the applicant’s right to enter and reside in Lebanon is not absolute, nor does it have the degree of certainty to give rise to an entitlement exercisable by the applicant himself. The Tribunal finds that the review applicant does not have an existing legally enforceable right to enter *and* reside in Lebanon.
64. The Tribunal is satisfied that the applicant does not have a legally enforceable right to enter and reside in any country other than her country of nationality, Jordan. The Tribunal finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act.

Convention Ground

65. The harm the applicant fears must be for reasons of a Convention ground. The applicant has claimed that she fears harm as a Christian (and therefore for reasons of religion) and as a member of a particular social group.
66. The Tribunal has considered whether the applicant would be persecuted for the membership of a particular social group. First the Tribunal will consider whether 'single Jordanian women without family protection' can constitute a particular social group.
67. In relation to membership of a particular social group, the High Court in *Applicant S* (above) held that there were three steps in determining whether a group is a "particular social group" for the purposes of Art 1A(2) of the Convention :

"First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large."

68. Whether a supposed group is a "particular social group" in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. However it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group. The Tribunal accepts that "single Jordanian women without family protection' are identifiable by characteristics or attributes common to all members of the group which distinguishes them from society at large. Accordingly the Tribunal finds that such women can constitute a particular social group in Jordan. The Tribunal accepts that although in the past, Jordan has been considered to be more liberal than some other countries in the region, there is an increase in Islamic fundamentalism which severely impacts this group.
69. The Tribunal is satisfied that the applicant is a member of a particular social group of single Jordanian women without family protection. The Tribunal finds that there are characteristics which unite this group and make them a cognisable group within society.

Well-founded fear

70. The Tribunal accepts that the applicant is a Christian but that her identity documents incorrectly state that she is Moslem. The Tribunal accepts that the applicant is unable to change these documents without the risk of experiencing serious harm.
71. The Tribunal finds, based on her evidence, that there is more than a remote or farfetched possibility that the applicant may be physically harmed upon her return to Jordan as a result of her identity documents being at odds with her Christianity and that she could be regarded as an apostate. The Tribunal accepts that this has happened in the past to the applicant in Jordan. The Tribunal finds that there is therefore a real chance of these things happening.
72. The Tribunal accepts that the physical harm that the applicant fears would amount to serious harm within the meaning of the Convention. Further the Tribunal accepts that being forced to live as a Moslem in the circumstances described above, could cause severe psychological harm to the extent that it is serious harm within the meaning of the Convention (see *SCAT v*

MIMIA [2003] FCAFC 80 30 April 2003). The Tribunal accepts the evidence before it that the applicant has suffered from torture and trauma in the past, requires a lot of counselling and is in a very fragile emotional and mental state. Therefore the Tribunal accepts that the applicant has a well-founded fear that she would be subjected to serious harm on her return to Jordan

73. In relation to the physical harm that the applicant fears, it is the actions of both private individuals (her mother's family) and State agents. In relation to the former, the Tribunal notes that the agent of persecution is traditionally the State or an agent of the State. However, the State need not itself be the agent of harm. It is enough that the State is unable or unwilling to provide effective protection from persecution. In *Chan v MIEA*, McHugh J said:

The threat need not be the product of any policy of the government of the person's country of nationality. It may be enough, depending on the circumstances, that the government has failed or is unable to protect the person in question from persecution. (at 430)

74. Persecution by private individuals or groups does not bring a person within the Convention unless the State either encourages or is or appears to be powerless to prevent that private persecution. In *Applicant A & Anor v MIEA & Anor*, the High Court stated:

A person ordinarily looks to "the country of his nationality" for protection of his fundamental rights and freedoms but, if "a well founded fear of being persecuted" makes a person "unwilling to avail himself of the protection of [the country of his nationality]", that fear must be a fear of persecution by the country of the putative refugee's nationality or persecution which that country is unable or unwilling to prevent... Thus the definition of "refugee" must be speaking of a fear of persecution that is official, or officially tolerated or uncontrollable by the authorities of the country of the refugee's nationality. (at 233, per Brennan CJ)

The Convention is primarily concerned to protect those racial, religious, national, political and social groups who are singled out and persecuted by or with the tacit acceptance of the government of the country from which they have fled or to which they are unwilling to return. Persecution by private individuals or groups does not by itself fall within the definition of refugee unless the State either encourages or is or appears to be powerless to prevent that private persecution. The object of the Convention is to provide refuge for those groups who, having lost the de jure or de facto protection of their governments, are unwilling to return to the countries of their nationality. (at 257-8 per McHugh J)

75. Thus, although the agent of persecution need not be the State, 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.
76. The Tribunal accepts that the authorities in Jordan would not be willing or able to protect the applicant from the actions of her mother's family. Further their inaction would be due either to the fact that she is a single woman and/or because she is a Christian whose identity documents state that she is a Moslem.
77. The Tribunal further accepts that the applicant has in the past suffered serious harm at the hands of the State (the Jordanian authorities namely the police) and therefore there is a real chance that this could occur again in the future. The Tribunal accepts that this occurred because the applicant asserted herself to be a Christian but had identity documents which stated that she was Moslem.

78. The Tribunal has considered whether it would be reasonable for the applicant to relocate in order to avoid the risk of persecution. Firstly in relation to the risk of harm from her mother's family this is a localised risk, but the applicant as a single woman with no family support would find it difficult to move around Jordan which in any event is a very small country. In addition, the other harm that the applicant fears, namely harm from State authorities such as the police as has happened to her in the past, is something that can occur no matter where she lives in Jordan. Therefore the Tribunal is satisfied that it is not reasonable for the applicant to relocate.
79. The Tribunal accepts the reasons given by the applicant for not applying for asylum when she was in the USA.
80. The Tribunal finds that the applicant faces a real chance of persecution that involves serious harm, systematic and discriminatory conduct. The Tribunal is satisfied that her membership of a particular social group of single women without family protection and her religion is the essential and significant reason for the persecution. Therefore the Tribunal finds that the applicant has a well-founded fear that she will be persecuted in the reasonably foreseeable future for reason of her membership of a particular social group and her religion and is a refugee within the meaning of the Convention.
81. The Tribunal finds that there is a real chance that the applicant will face significant physical harassment and/or ill-treatment if she were to return to Jordan now or in the reasonably foreseeable future. The Tribunal finds that the harm the applicant would be subjected to involves 'serious harm' as required by paragraph 91R(1)(b) of the Act. The Tribunal is satisfied that the applicant's membership of a particular social group and her religion is the essential and significant reasons for her fear of persecution as required by paragraph 91R(1)(a) of the Act. The Tribunal finds that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves selective harassment for a Convention reason. The Tribunal is satisfied that the applicant does not have adequate and effective state protection available to her. The Tribunal is satisfied that the applicant would not be able to avoid the harm she fears by internally relocating within Jordan.
82. For the reasons outlined above, the Tribunal is satisfied that the applicant's fear of persecution is well-founded.

CONCLUSIONS

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

DECISION

84. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.