

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 73952

REFUGEE APPEAL NO 73953

REFUGEE APPEAL NO 73954

REFUGEE APPEAL NO 73955

REFUGEE APPEAL NO 73956

REFUGEE APPEAL NO 73957

REFUGEE APPEAL NO 73958

AT AUCKLAND

Before:

B Burson (Chairperson)
C M Treadwell (Member)

Counsel for the Appellants:

J Hindman

Appearing for the NZIS:

No Appearance

Date of Hearing:

1 & 22 February 2005

Date of Decision:

26 May 2005

DECISION

INTRODUCTION

[1] These are appeals against the decisions of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS), declining the grant of refugee status to the appellants.

[2] The appellants in *Refugee Appeal Nos 73952 and 73953* are the husband and wife respectively. The remainder of the appellants are their dependent children born outside New Zealand. The couple have two further children born in New Zealand who are New Zealand citizens. Consequently, they are not appellants before the Authority. The husband and wife are the responsible adults for the appellant children in terms of s141B of the Act and their evidence stood as that of these children. In the circumstances a joint decision will be issued for the appellants.

[3] The husband is a stateless Gaza Palestinian. However Jordan has plainly been his country of former habitual residence in terms of Article 1A(2) of the Refugee Convention and it is by reference to Jordan that his claim for refugee status must be considered. The wife however has had Jordanian citizenship conferred on her and she is a national of Jordan. The children are also stateless but as with the husband, they have the right to re-enter Jordan. Jordan is also their country of former habitual residence for the purposes of the Refugee Convention

[4] The husband claims to be in fear of serious harm if returned to Jordan because he has been persecuted in the past by the *Mukhabarat*, the Jordanian Intelligence Service, who have pressured him to spy on Palestinian organisations operating inside Jordan. The wife and the children fear persecution on the basis of the discrimination they face if returned to Jordan because of their status as the spouse and children of a Palestinian whose origins are from the Gaza Strip.

[5] The central issue to be considered in relation to their claims is the well-foundedness of each of their fears. Before assessing the claims, a summary of the evidence will be set out.

THE APPELLANTS' CASE

THE HUSBAND'S EVIDENCE

[6] The husband was born in a refugee camp in the Gaza Strip, his family migrating there in the aftermath of the first Arab/Israeli War in 1948. However, the family were forced to migrate once again in 1967 following the "Six Day War", his parents eventually settling in Jordan with the husband and his siblings. The family lived in X camp until 1998 when the whole family moved to a nearby area outside the camp.

[7] His father was a sergeant in the Palestinian Liberation Army (PLA) then situated in Jordan and was a member of the *Fedayeen* (fighters) who were engaged in armed struggle against the Israeli forces which had occupied the West Bank and Gaza Strip in the course of the 1967 war. His father went to Syria and Lebanon for extended periods in the course of his duties as a PLA *Fedayeen*.

[8] Following the conflict between the Palestinians and the Jordanian army in 1970, the husband's father began experiencing problems with the Jordanian authorities who had blamed the uprising on Palestinians from Gaza. His father was placed under heavy surveillance. He was arrested and the house was searched on many occasions, even continuing after his father retired from the PLA in 1980. He can recall his father being detained in 1985 by the *Mukhabarat* for one and a half months. When his father returned home, he did not have any signs of physical ill-treatment but was psychologically unwell.

[9] As a youth, the husband took part in protests against the Jordanian government who tried to prevent Palestinians in Jordan from fighting the Israelis and initiated policies which were discriminatory towards them. These protests often took the form of stone-throwing and the husband, along with two of his brothers, took part on a number of occasions.

[10] One of his brothers has been detained on a number of occasions and mistreated in detention. The last time this happened, as far as the appellant can recall, was in 1994. The brother has had his passport suspended and taken away as a result. The other brother was not as active in the Palestinian youth movements inside the camps, nevertheless, he has also had his passport taken

from him. That was, however, as a result of him being involved in a fight with a policeman.

[11] In 1986, the husband was accepted into Y University. As a Palestinian from Gaza, the husband was, unlike those who originated from the West Bank, considered a foreign student and was thus forced to compete for entry with all non-Jordanians for the very limited number of seats allocated to foreign students. Upon being accepted, he ceased all his protest activities.

[12] However, shortly after his enrolment, he was called to the *Mukhabarat* university branch. He was told he was forbidden to engage in any political activity or discussion and told not to join any student organisation. The husband nevertheless became involved in a discussion group, albeit one that only related to courses offered at the University. While sometimes the lectures held by this group would stray into political matters, the husband was careful not to speak openly during the lectures and to moderate his involvement in topics and speeches that would not open him up to any charge of criticising the Jordanian government.

[13] In 1987, he was summonsed to report to the main *Mukhabarat* office in Y city. He was interrogated about his involvement in the discussion group. He was told by the *Mukhabarat* officers that he had no right to engage in any discussion of any kind. He was verbally abused. The officers made derogatory remarks about his father. He was not physically harmed. The husband was kept overnight and released the following morning, by being forcibly ejected from a car into the street. Throughout the remainder of 1987, the husband was called to the university *Mukhabarat* from time to time for questioning as to what he was doing but was not kept overnight.

[14] The situation deteriorated in 1988 during which he suffered three detentions when he was held for three days, four days and six days respectively. While each of these detentions involved verbal abuse against him and his family background as before, the level of physical mistreatment increased with each detention. From being subjected to occasional beating and kicking in the first to heavier beatings in the second, it evolved to his being beaten and given *falaka* (beating on the soles of the feet) daily during the last. As a result of his treatment in this detention he suffered a temporary incapacity to walk.

[15] The nature of the interrogation also changed during this time. He was now questioned about his involvement in specific militant Palestinian organisations such as the Popular Front for the Liberation of Palestine, the Jordanian and Palestinian Communist Parties and other Islamic organisations. He was also questioned about Ba'ath Party activities in Jordan. At this time the *Mukhabarat* began pressuring the appellant to join one of the organisations and to become an informer for them. This he refused to do.

[16] The appellant's detentions continued in similar vein during 1989 when he was called repeatedly to the university *Mukhabarat* office. On one occasion, he failed to report and some weeks later he was arrested and taken to their station where he was held for four days and beaten to the point of unconsciousness.

[17] Nevertheless, the appellant graduated from university in 1990 and began looking for a job. He was only partially successful in that he managed to work full-time at the branch of a company for which he worked on a part-time basis during his university studies in another branch. When the intelligence services found out, they put pressure on the appellant's employers to fire him but they did not do so.

[18] Between 1990 and 1995, the husband was repeatedly called to the *Mukhabarat* for questioning. He was called more than 10 times and held for two or three days. As before, he was questioned in the usual manner as to what he was doing and who he was seeing, and his involvement in various Palestinian organisations. Again, they offered financial reward for his becoming an informer but again he refused. The husband had been thinking about leaving Jordan for some time but the temporary nature of his Jordanian-issued travel document made it very hard for him to be issued with anything other than a temporary visa. For that reason he decided to undertake a Master's degree to improve his chances of finding work outside Jordan on a more long-term basis.

[19] In 1995, the husband commenced his Master's at Z University which he completed in 1998. He estimates that, of the 10,000 to 15,000 students, only a small percentage were Gaza Palestinian; indeed, he knew of only four in the entire Master's programme. Soon after enrolling, he became involved in a club that promoted scientific and philosophical discussions at Z University and was vice president of this club between 1995 and 1997. The club held between 20 and 30 such lectures per academic year and would invite guest speakers. If the proposed

speakers were not on the faculty, the club had to get permission from university authorities for the speaker's attendance, permission that was from time to time denied.

[20] While undertaking his Master's, he was summoned to the university *Mukharbarat* office. On one such occasion, in 1995, he reported but was told to go home after a couple of hours. That night, however, *Mukharbarat* officers visited his house and demanded to know why he had not reported. He began arguing with them and was beaten in front of his wife and taken to their offices. He was detained for a period of 10 days. During this time he was kept in a small one square metre room with no bathroom, bed or other facilities. He was repeatedly taken to another room and interrogated every day as to his activities at university. He was placed in leg cuffs. He was beaten and kicked during the interrogations. He was subjected to *falaka*. During one interrogation session, an officer hit him with a stapler, causing his hand to bleed. He was questioned every day about his involvement in various Palestinian organisations. He was accused of printing circulars against the government. He believes the accusation about printing circulars came because they had had him under surveillance which would have revealed that as part of his job he had to go to a printer's office to get promotional material for his employer.

[21] Throughout his Master's degree, he was detained on approximately a further 10 occasions for periods between one and three days and was interrogated about his involvement in various organisations during the majority of them. He was asked about the activities of some other people who were on his course or who were involved in the club. He admitted he knew those he did, but denied any knowledge about any activities they may have undertaken for the groups the *Mukharbarat* were interested in. Again he was encouraged to become an informer with the promise of financial and social assistance but he refused. During these detentions, he and his family were abused; he was beaten and kicked, albeit not to the level he was during the detention in 1995.

[22] There was, however, one further detention in 1997 which did reach this level of intensity of mistreatment. He was detained on suspicion of printing circulars. His house was searched but nothing was found. He was taken by the *Mukhabarat* and held for four days during which time he was interrogated about this matter. He denied any involvement. He was beaten and given *falaka*. During

one interrogation session, he was stripped naked and threatened with sexual assault.

[23] In 1998, the husband managed to obtain employment in Saudi Arabia. He returned to the Saudi/Jordanian border in 1999 to facilitate his wife and children joining him in Saudi Arabia where they remained until 2001. At this time the family returned briefly to Jordan. The couple had by that time resolved to try and settle outside the Middle East and wanted to visit Jordan to see their families before they did so. While in Jordan, the *Mukhabarat* became aware of his presence and the husband was summoned to attend their offices. However, he did not do so. Instead he and his family left without responding to this summons.

[24] Since the appellants arrived in New Zealand in 2001, the husband has maintained regular contact with his father. His father has informed him that he (the father) has been summonsed on a number of occasions by the *Mukhabarat*. He was first summonsed two weeks after the husband and the family arrived in New Zealand. He was summonsed a second time the very next day. He was summonsed again a further two times in 2001, once in 2003 and was last summonsed by the *Mukhabarat* in 2004. On the first two occasions the husband's father was pushed and sworn at. He was told to explain why he had failed to tell the authorities about his son's whereabouts. When his father told them that the husband was in New Zealand, the *Mukhabarat* were angry that he had not brought his son to see them, but rather had allowed him to depart Jordan without replying to the summons. He has been made to sign an undertaking that he will immediately report the husband's presence in Jordan to the *Mukhabarat* if he were to ever return.

[25] The husband believes that he has been the subject of this treatment because he is a member of a relatively small group of persons, namely educated Palestinians whose family originate from the Gaza area. Since the "Black September" uprising of 1970, the Jordanian leadership has never trusted Gaza Palestinians. The fact that his father took an active part in the uprising has affected the way in which the Jordanian authorities perceive the entire family.

[26] It is because of this antipathy that the Jordanian Government has refused to extend to Gaza Palestinians the full rights enjoyed by West Bank originating Palestinians originating from the West Bank to access free government services in

Jordan. His children will fall into the same category as he, in that they too will not be able to access free government health, medical or other social welfare assistance. They will have to pay for everything and because he has a large family, he simply cannot afford to do so. The position of the two New Zealand-born children is even more dire. As citizens of New Zealand, they are ineligible for any form of assistance in Jordan and are eligible for two weeks' visitors' permits only.

[27] The husband fears that the harassment that he suffered in the past will continue in the future. The authorities are interested in him. They will never trust him and he will always be the object of surveillance, harassment and detention. He believes this because of something that was said to him during one of his detentions. He was encouraged by them to form a political party to act as a magnet to attract dissatisfied elements within Jordanian society, both Palestinian and Jordanian nationals. He is seen as someone who is able to motivate people and thus is seen as a potential threat. This negative view has been reinforced by the fact he has persistently and consistently refused to go along with their request to act as an informer.

THE WIFE'S EVIDENCE

[28] The wife was born in a village in the West Bank and like the husband, emigrated to Jordan with her family following the 'Six Day War'. She attended school in Jordan but was refused permission by her father to attend secondary school. Unlike the husband, she has been given Jordanian citizenship and, therefore, has full rights to access government health, housing and other related assistance because her family are from the West Bank. She repeated the husband's concerns about the position of the children. Because she cannot pass on her nationality to her children, they follow her husband's nationality. This means they are considered foreigners and will have to pay for everything privately which the family simply cannot afford.

[29] As for the husband's problems, the wife confirmed that he has been taken away for questioning and detained on numerous occasions by the Jordanian authorities. She has confirmed being at home on two occasions in 1995 and 1997 when the husband was forcibly arrested from the house. She confirmed that when the husband came home from his detention in 1995, he was almost suicidal and

she was very concerned for his safety. She told the Authority that the Jordanian authorities searched the family home in 1997 looking for circulars. She said the Jordanian government does not like Gaza Palestinians.

THE EVIDENCE OF THE HUSBAND'S BROTHER

[30] The Authority heard from the husband's brother who obtained permanent residence in New Zealand in the late 1990s under the General Skills category. The brother confirmed that the father was a member of the PLA and said that this was the source of all the family's troubles. He confirmed the husband's evidence as to the suspicion with which Gaza Palestinians are viewed by the Jordanian government in general and, in particular, in the education field.

[31] The brother confirmed that he tried on a number of occasions to secure the release of the husband and his other brothers from detention by the *Mukhabarat*. He said this was very hard to do as a Palestinian from Gaza but he would approach some intermediaries who were either Jordanian citizens or Palestinians from the West Bank and secure the husband's release through the payment of money. The brother confirmed that he too witnessed the husband being forcibly taken from the family home in 1995 by the *Mukhabarat*.

REFUGEE APPLICATIONS

[32] The appellants arrived in New Zealand in June 2001 and each made a claim for asylum on 29 June 2001. The husband and wife were interviewed by the RSB on 5 February 2002 which, by decision dated 12 June 2002, dismissed the applications. Each appellant duly appealed to this Authority.

[33] On the 31 March 2005 the Authority received from counsel further written submissions together with country information and original copies of university yearbooks showing the ethnic origins of graduates. This information has been taken into account in reaching this decision.

THE ISSUES

[34] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

"...owing to a 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[35] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

CREDIBILITY

[36] The Authority had concerns about the husband's account but notes that his account fits within the historical record as to the existence of martial law and general restrictions on civil and political freedoms at the time - see P Robins *A History of Jordan* (Cambridge University Press, Cambridge, 2004) at 174–176; see also Sham and Lucas "Normalisation and anti-normalisation in Jordan: the public debate" *Middle East Review of International Affairs* Volume 5, No 3 (2001) 56; Human Rights Watch Press Release *Jordan: Clamping Down on Critics, Human Rights Violations in Advance of the Parliamentary Elections* (29 October 1997) <http://www.hrw.org/press97/oct/jordanpe.htm> (accessed 22 March 2003). His evidence was plausible and consistent.

[37] It accepts that he does not enjoy Jordanian nationality and is stateless. Although he has been issued with a Jordanian Passport, this document makes clear that it is issued for travel purposes only and it does not confer on him

Jordanian nationality. He does however have the right of re-entry into Jordan. The Authority further accepts his account of his troubles in Jordan, his country of former habitual residence, in its entirety.

[38] The Authority has been provided with documentary evidence to establish that the five dependent appellants in this appeal are not Jordanian citizens. Under Jordanian law the children do not have citizenship conferred on them by fact of their mother's nationality. The Authority therefore accepts the evidence in relation to these appellants as it relates to their status being identical with that of the husband's. They are, like their father, stateless. However, like their father, Jordan has also been their country of former habitual residence.

A WELL-FOUNDED FEAR OF BEING PERSECUTED

THE HUSBAND

[39] The Authority finds that the husband does have a well-founded fear of being persecuted if returned to Jordan. He has a right of return to Jordan and is able to return to it. The risk to him arises from the convergence of three discrete personal factors - his origin from Gaza, his familial background and his education - against a background of evidence of continuing human rights abuses by agencies of state.

His Gaza origins

[40] Following the defeat of the Ottoman Empire in WWI, several Ottoman Arab territories, including what is now the West Bank, Gaza, Israel and Jordan, were placed under the administration of Great Britain by the League of Nations. The mandate lasted until 1948. However, in 1923, Britain granted limited autonomy to that part of the mandate area then known as Trans-Jordan, which lay to the east of the Jordan River and effectively comprises modern day Jordan.

[41] When the British left in 1948 and the first Arab/Israeli war broke out, the salient effect for present purposes was the creation of separate geographical units in both Gaza and the West Bank, with the West Bank being seized by Jordan; the then Jordanian King being unable to raise sufficient forces to deploy in Gaza – see Robins (ibid at 67 – 70). The Jordanian control of the West Bank lasted until the Six Day War in 1967 when it was seized by Israel.

[42] By contrast, at no stage has the Jordanian government ever controlled the Gaza Strip from where the husband originates. Gaza was administered by the Egyptians until Israel seized control in 1967 war. Thus Gaza Palestinians, unlike their brethren in the West Bank, have never been subjected to control by the Jordanian intelligence and security services but rather have been controlled by their Egyptian counterparts. M Shemas *The Palestinian entity 1959–1974 Arab politics and the PLO* (2nd revised ed. Frank Cass and Co, London, 1996) at 59, notes that it was the Egyptian intelligence and security apparatus that was in a position to stifle armed activity by *Fatah* against Israel from Gaza when this was deemed counterproductive to wider Arab strategic aims. Shemas (*ibid* chapter 2 pp37-94) details the struggle between Jordan, Egypt and Syria for control over Palestinian representation in the mid- 1960s and notes specifically (at p76) at one time Egypt's strategic goal as being, the elimination of the Hashemite kingdom and its replacement with a pro-Egyptian entity.

[43] It is here that the husband's and his brother's evidence as to the general distrust of Gaza Palestinians in Jordan can be seen to find some concrete historical resonance. As Gaza-based Palestinians, they have been outside Jordan's control and under the control of an entity that has historically competed for influence and at one time sought the active overthrow of the monarchy. Indeed, Shemas records (at p108) that there was a standing Egyptian Palestinian *fedayeen* battalion available to Egyptian headquarters in the Gaza Strip and which was for a short time deployed by the Egyptian army into Jordan itself to mount attacks against Israel from Jordanian and not Egyptian soil. Against this historical background, the notion that Gaza-based Palestinians in Jordan might continue to be viewed with some distrust and kept under active surveillance is entirely plausible.

His father's background and involvement in the PLA

[44] The appellant's father was a fighter in the PLA who fought with the Palestinians against the Jordanians. The conflict between the then PLO and the Jordanian army in 1970-1971 is something of a watershed in Jordanian history. It firmly established the control of the King over the Palestinian organisations that had hitherto been growing in strength inside Jordan to the extent that Palestinian guerrillas felt strong enough to take over the city of Irbid and declare a "people's government" thereby precipitating the 1970 conflict – see Robins (*ibid* at 131);

Shemesh (ibid at 132-140).

[45] Robins observes that one of the effects of the conflict was to bring into focus schisms within the respective communities as regards their relationship to the Jordanian state. As to the Palestinians, Robins (at 134-135) observes:

“TWO PEOPLES, ONE STATE

The expulsion of the PLO may have ended the immediate, direct military threat to the kingdom from Palestinian nationalism, but more subtle realities, like demography, immigration and economic domination, offered the possibility of the increased Palestinianisation of Jordan. The emergence of the naked struggle for power between the Palestinian fedayeen and the Jordanian state had, moreover, brought such lingering tensions out into the open by the early 1970s...

The division within the Palestinian people of Jordan, which had become evident during the civil war, was deepened. On the one hand there were the Palestinian Jordanians, those who, thought they continued to be conscious of their geographical origins, and were angry at the loss of Palestine, were committed by dint of the practicalities of life and career to the state of Jordan. The dominant profile of this tendency was Palestinians who had arrived in the East Bank in the aftermath of 1948, and whose children and grandchildren were now settled. They became increasingly preoccupied with the political and public policymaking arena of Jordan as the one that had the greatest effect upon their lives and fortunes.

On the other hand, there were the Palestinian nationalists, those whose ideological consciousness and commitment to the Palestinian cause eclipsed temporary chance geographical residence. In particular, this group included self-consciously Palestinian political activists. More generally, it encompassed those who had arrived in the East Bank after the 1967 war, many of whom had been doubly displaced having also been initially uprooted to the West Bank in 1948. They tended to see their stay in Jordan as unwelcome and impermanent. They saw the PLO as their main political representatives.

In the aftermath of the civil war, they became largely disconnected from the politics of the kingdom, eschewing elections both as candidates and voters.”

[46] The appellant’s family are in the latter group, Palestinian nationalists committed to their cause. The historical lack of identity between this group and the Jordanian state will only serve to reinforce any suspicions or concerns the Jordanian security and intelligence apparatus would have about the husband.

His education

[47] The report by Paz “Higher Education and Development of Palestinian Islamic Groups” *Middle Eastern Review of International Affairs* Volume 4 No 2 (June 2000) at 81-95, while not specifically dealing with the situation inside Jordan, is instructive in that it highlights the important relationship between institutions of higher learning in the occupied territories and the development of major Islamic groups. Paz states (ibid at p91) that this relationship had two main effects - firstly

the creation of a new, young and educated generation of leaders who introduced Palestinian nationalism into the Islamic arena; secondly, it provided a space for the nascent political and cultural struggle between emerging Islamic groups and the more established nationalist secular movement to develop.

[48] Looking in particular at Hamas and Islamic Jihad, Paz observes that in relation to both, universities and other higher education institutions were significant to their development: Hamas grew essentially from the involvement of its parent organisation, the Muslim Brotherhood, in university committees and effectively controlled the Islamic University of Gaza (p89; see also in this regard International Crisis Group *Dealing with Hamas* (26 January 2004) at p5). Islamic Jihad was also founded at the Islamic University in Gaza in mid-1982 splitting from the Muslim Brotherhood over the initial support for the Islamic Revolution in Iran (see pp89– 91).

[49] The significant point is that the role universities and other higher learning institutions have played in the development of radical Islamic Groups is a matter which the Authority finds would be known to Jordanian Intelligence services. Country information submitted by counsel refers to the vetting of all university appointments and the placing of informers amongst teachers and staff by the Jordanian intelligence services – see *The Palestinian Human Rights Monitor Report* (August 1999) (<http://www.phrmq.org/monitor1999/aug99-background.htm>)

[50] The university year books provided by counsel while plainly not definitive, nevertheless do illuminate the fact that as a Gaza Palestinian with a Masters degree, the husband will form part of a small group. For example, in 1999, the year the husband graduated, less than per cent of graduates were Palestinian. Of this, only a portion can be expected to be from Gaza.

[51] These factors relating to intelligence service concern and control and the small numbers of Gaza Palestinians undertaking higher education can also be seen to explain and contextualise ongoing interest in the husband.

HUMAN RIGHTS IN JORDAN

[52] The United States Department of State *Country Report on Human Rights Practises 2004: Jordan* (28 February 2005) at p1:

“Although the Government respected human rights in some areas, its overall record continued to reflect many problems. Reported continuing abuses included police abuse and mistreatment of detainees, allegations of torture, arbitrary arrest and detention, lack of transparent investigations and of accountability within the security services resulting in a climate of impunity, denial of due process of law stemming from the expanded authority of the State Security Court and interference in the judicial process, infringements on citizens’ privacy rights, harassment of members of opposition political parties, and significant restrictions on freedom of speech, press, assembly, and association. Citizens did not have the right to change their government.

[53] Similar reports by the State Department in 2001, 2002, 2003 and 2004 make the same observations, establishing a pattern of human rights abuse and impunity for the state security apparatus exists and this can be expected to continue in the future.

CONCLUSION ON HUSBAND

[54] The Authority concludes that as a result of the overlap of the above factors, there is a real chance that the husband will be subjected to the same treatment as he was in the past. His family is from Gaza, the birthplace of some active militant Palestinian organisations and an area historically under the control of a strategic competitor. His father fought against the Jordanian regime at a key time in its history. The husband is a well-educated articulate man, able to express himself in clear political terms, as his evidence to the Authority demonstrated.

[55] The husband’s past experiences also strongly point to a real risk of serious harm in the future. He has been repeatedly detained by the Jordanian Intelligence Services since 1988 and pressured to become an informer. A conservative estimate puts the number of detentions in excess of 30. The detentions lasted for up to 10 days. During these detentions he has been verbally abused and beaten. He has been subjected to *falaka*, a common form of torture. There is evidence of continuing interest in him by the intelligence services; his father has been repeatedly summonsed and required to undertake to report the presence of the husband in Jordan to the intelligence services.

[56] In light of the above there is a real chance that upon arrival in Jordan, the husband will be arrested and detained. Country information continues to show that torture and ill treatment remain a problem in detention. For these reasons the husband's fear of being persecuted if returned to Jordan is well-founded. The first principal issue is answered in the affirmative for him.

[57] Plainly his predicament is contributed to by his ethnic origins which come within the Convention grounds of race and particular social group. The second principal question is answered also in the affirmative for the husband.

THE WIFE

[58] In her written submissions, counsel submits that the wife faces a well-founded fear of being persecuted as the rights of full citizenship she enjoyed ceased when she married the appellant, and that the cumulative effect of the discriminatory deprivation of both her civil and political rights and economic, social and cultural rights amount to persecution.

[59] Yet, the wife's own evidence contradicted this submission. In her evidence, she accepted that she still retained her rights of citizenship, notwithstanding her marriage to the husband. She counterpoised her situation with that of her husband and children. She showed the Authority the stamp in her passport which indicated that her children were to be included on her husband's temporary passport and not her own.

[60] The Australian Department of Foreign Affairs and Trade *Country Information Report: Citizenship/Residencies Issues in Jordan*, Document CX40452 (9 March 2000), quoting the Jordanian nationality laws, confirms that a Jordanian woman who marries a non-Jordanian citizen may acquire the nationality of her husband but nevertheless retains her Jordanian citizenship, unless she abandons it in accordance with the provisions of the law. The wife in this case has not done so. There is no automatic loss of citizenship thereby depriving the right of the wife to her ordinary civil and political or economic, social and cultural rights. Indeed the wife suffered no such loss of rights.

[61] Importantly, the wife has not suffered any arrest or harassment because of her husband's status as a Gaza-Palestinian whom the intelligence services of

Jordan wish to recruit or otherwise suspect of involvement in anti-state activities.

[62] Taking the above factors into account, the wife does not have a well-founded fear of being persecuted in Jordan. The first principal issue is answered in the negative. There is no need to consider the second. She is not a refugee.

THE CHILDREN

[63] The Authority accepts that each of the appellants in *Refugee Appeal Nos 73954, 73955, 73956, 73957 & 73958*, being the dependent children of a Gaza-Palestinian, do not have any right to acquire the citizenship status of their mother. This much was confirmed in the wife's passport. As such, the children have the same rights that attach to their father. This includes the right of re-entry into Jordan

[64] Country information confirms that, as Palestinians originating from Gaza, they will suffer restrictions in their country of former habitual residence. The Australian Department of Foreign Affairs and Trade *Country Information Report: Palestinian refugees, residency and citizenship rights in Jordan*, CX 43301 (6 July 2000) notes that a significant number of Palestinians of Gaza origin who came after 1967 (the husband's family) to be resident in Jordan, do not, in general, have any access to Jordanian citizenship. It confirms they are able to obtain passports to enable them to travel which, while they are capable of renewal, do not give them the same rights as Jordanian citizens. They are non-Jordanians and, as such, they have no right of access to government services or to be given government employment.

[65] The report notes that residency does enable them to work in the private sector but, without special exemption, they are subject to sector-specific restrictions that apply to all non-Jordanians. For example, some professions require an individual to be a Jordanian citizen, thus effectively prohibiting Gaza-Palestinians from entry into the professions in Jordan. The report confirms that, on an occasional basis at least, there appears to be some discretionary approval by the Jordanian cabinet of membership of some Gaza professionals, noting in 1999 some 200 Gazan professionals were admitted to membership of professional associations. It is not an automatic right.

[66] The children's claims are advanced by their parents on the basis that the children as stateless Palestinians in Jordan, each will face discrimination in accessing public services such as health and education. They will also face restrictions in getting employment in the public sector. It is submitted by counsel that the cumulative effect of the denial of their "second level" rights is that the appellants each face a well-founded fear of being persecuted.

[67] Although not directly articulated by counsel, the reference to "second level" rights is a reference to Professor Hathaway's well known concept of the hierarchy of rights - see *The Law of Refugee Status* (Butterworths, Toronto, 1991) at pp108-111. The submission implicitly raises an argument under the International Covenant on Economic, Social and Cultural Rights (ICESCR) which sets out the obligation on state parties in respect of various rights including the right to work (Art. 6) under just and favourable conditions (Art. 7); to an adequate standard of living (Art. 11) including food clothing and housing and the right to the highest attainable standard of physical and mental health (Art. 12). Some caution here is warranted.

[68] The primary obligation of State parties is set out in Article 2, which provides:

- “1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. States party to the present Covenant undertake to guarantee that those rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present Covenant to non-nationals.”

[69] The obvious point raised by these appeals, derives from the fact that they are non-nationals of Jordan, like the husband. The question arises as to what is the obligation of Jordan under the ICESCR towards the husband and the children as non - nationals. In his seminal work on the covenant, Craven, *The International Covenant on Economic, Social and Cultural Rights – a perspective on its development* (Clarendon, 1998) at 172, notes a lack of clear consensus from the Committee of Experts appointed to examine periodic reports of State parties, as to

the scope of the non-discrimination provisions under Article 2. He observes that the Committee on the Elimination of Racial Discrimination has tended to allow the differential treatment of non-nationals and observes that, during the drafting of Article 26 ICCPR, states were not ready to accept that aliens should have the equal rights of citizens.

[70] Similarly Lillich *The Human Rights of Aliens in Contemporary International Law* (Manchester University Press, Manchester 1984) at p47–48 observes that the protection afforded to non-nationals under the ICESCR is less than that afforded to them under the International Covenant on Civil and Political Rights (ICCPR) and that the ICESCR does not embody a general norm of non-discrimination against aliens.

[71] This is not to say foreign nationals are without any rights whatsoever. Lillich notes multilateral and bilateral developments in relation to migrant workers under various International Labour Organisation Workers Conventions (see pp69-74). Nor is it correct to say that the rights contained in the ICESCR are not justifiable. At the very least, there may a situation where the utter destitution of a non national can amount to a breach of the wider enjoyed right under Article 7 ICPR to be free from degrading or inhuman treatment or conduct. Rights under the ICCPR and ICESCR are not hermetically sealed.

[72] It is not necessary for present purposes to resolve the extent to which State parties owe obligations under the ICESCR to non nationals, nor to identify the extent of the “core minimum obligations” imposed upon Jordan under the covenant – see Comment of the Committee on Economic Social and Cultural Rights General Comment No 3 (1990) *The Nature of States Parties Obligations (Article 2 Paragraph1, of the Covenant)* at para 10 and see Craven (ibid at 141-144). This is because even if it were to be established that there was some unlawful discriminatory failure of the Jordanian state to comply with its core minimum entitlement in respect of any of the children’s rights under the ICESCR, this does not *ipso facto* amount to a finding of a well founded fear of their being persecuted. Discrimination *per se* does not amount to persecution: *Refugee Appeal No 2039/93 re MN* at p14; *Refugee Appeal No 71404/99* (29 October 1999) at [65]–[67]. The discrimination must result in some form of serious harm in respect of which it can be said there is also a failure of state protection.

[73] In this regard, the idea that any breach of an obligation owed by Jordan to the children under the ICESCR will lead to serious harm is, given the children's young ages, entirely speculative. The Authority observes that at all times in Jordan the husband was able to provide for his family through work. The family had adequate housing. The father was educated to a post graduate degree. His brother who gave evidence is also tertiary educated. Their ability to obtain an education is a pointer to the ability of the children to also obtain an education and underscores the conjectural nature of the claim in this regard.

[74] The claims of the children are the Authority finds, not well founded. The first principal question is answered in the negative for each of the children. There is no need to consider the second.

[75] Although counsel refers to the difficulties the New Zealand born children may encounter in Jordan in her written submissions, they are statutorily barred from making a claim for refugee status. They are not appellants before this Authority. It has no jurisdiction to consider their position and declines that tacit invitation to do so.

CONCLUSION

[76] For the reasons set out above the husband is a refugee within the meaning of Article 1A(2) of the Refugee Convention. His appeal is allowed. Refugee status is granted. The wife and children are not refugees. Their respective appeals are dismissed.

.....
B Burson
Chairperson