



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

JORDAN

IAA reference: IAA20/07832

Date and time of decision: 27 February 2020 16:11:00

K Allen, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a stateless Palestinian of Sunni religion from Syria. On 27 September 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 19 January 2018 a delegate of the Minister for Immigration refused to grant the visa on the basis that the applicant was not owed protection, finding him to not be a witness of truth in relation to his claims. The delegate found the applicant to be from Jordan. On 14 March 2018 the IAA affirmed the decision not to grant the visa.
3. [In] December 2019 the Federal Circuit Court of Australia (FCCA) remitted the matter back to the IAA for reconsideration on the basis that the IAA's reasoning and finding in relation to whether the applicant held a driver's licence was illogical or irrational, without a probative basis, and that this finding was central to the IAA's findings as to the applicant's credibility and rejection of his claims.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. No further information has been obtained or received.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - He is a stateless Palestinian who was living in Syria with his father, wife and three sons. His mother had died [when] he was aged about [age]. He has no siblings.
 - In June 2012, his father, wife and children were all killed in a rocket attack that destroyed his home in Damascus while he was out refilling a gas cylinder. All of his identity documents were destroyed in this attack.
 - He passed out and later stayed with friends for a few days. Then he began drinking and became crazy and went to the local police station. He demanded to know who was responsible for the bombing and fought with a police officer. He said that he would make whoever did this pay and the police interpreted that as a threat to the regime. He was charged with assaulting police and supporting the uprising and put in a cell, where he was kept for 10 days.
 - After 10 days, some army officers came and he was blindfolded and taken to another building and kept there for six months. He was interrogated and tortured once every ten days or two weeks. He was asked many meaningless questions about his father and his wife, political questions and what he thought about the government. He could not answer the questions and was beaten and burned with cigarettes.
 - After six months they told him that he was being released but that they were going to be watching him. As he was leaving, one of the officers whispered to him that the police

would not stop until he had disappeared. He believes this meant that the police would kill him.

- When he was released he had no papers, no money and nowhere to go. He went to a shop and stole a razor blade, cut his wrists and passed out. He woke up in hospital and was kept there for three days. The doctor told him that people had found him on the street and brought him there.
- When he was released from hospital he went back to his home. He saw some neighbours and friends and one neighbour offered him their spare room, which was on the roof of their house and had a separate staircase. This family looked after him.
- After about two weeks, some plain clothes men came to the room at night. They showed him their police identification and told him to wait outside. They searched the room and smashed everything in there and then said “see you next time” as they left.
- This happened more than four times over the next three months. Eventually the neighbour told him to leave the country because the neighbour and his family were getting scared.
- [He] he knew [drivers] who could smuggle him into [Country 1] without documents. He knew that he could get a false passport in [Country 1]. He found a driver who was able to smuggle him over the border.
- At the interview with the delegate on 27 November 2017 (the SHEV interview) he explained that in about December 2012 the [driver] took him from Damascus to [City 1 in Country 2] and then [City 2 in Country 2]. This driver knew someone in [City 2 in Country 2] who could help him and gave him that person’s telephone number. The applicant called this person and was able to arrange a false passport for travel to [Country 3]. He always intended to come to Australia.
- He left [Country 3] and travelled by sea to [Country 4], then crossed into [Province of Country 4] and [Country 5]. He left [Country 5] on a raft and landed in Australia on [an] Island in the Torres Strait [in] April 2013, from there he was transferred to Darwin via Thursday Island.
- After he was released from immigration detention he settled in [City 1 Australia]. He came into contact with Syrians who supported the regime and they became hostile and made threatening remarks to him. He reported this to the Department and was told to report it to the police but he decided to leave [City 1 Australia] and move to [City 2 Australia] in 2015.
- He has had psychological counselling in Australia.
- He cannot return to Syria because he will be arrested, detained, tortured and killed by the Syrian regime at the airport because he is a stateless Palestinian.
- He also fears that he will be arrested and tortured as an opponent of the regime or as a suspected rebel and that he will be harmed by Shi’a militia because he is Sunni.
- He will suffer harm as a stateless Palestinian because he will not be able to work legally, operate a business, own land or own property.

Factual findings

7. I note at the outset that the applicant’s representative has provided information about the applicant’s conduct in Australia and his character. I do not consider that these matters are

relevant to my assessment of the applicant's claims for protection and I have not considered this information in making this decision.

8. I have considered the applicant's other evidence as a whole and when his evidence is considered cumulatively it does not indicate to me that the applicant has provided a truthful account of his place of origin, his family circumstances or the events which he claims caused him to leave for Australia and seek asylum. I address the difficulties with applicant's evidence below. I have considered whether to exercise my discretion under s.473DC(3) of the Act to obtain new information about the applicant's ties to Syria and Jordan but given my finding that he has not been truthful in the past and given the previous opportunities that the applicant has had to make his claims about his nationality, I do not consider that I would obtain any useful new information from that process. I have decided not exercise that discretion.
9. The applicant claims he is a stateless Palestinian who was living in Syria with his father, wife and three sons. He claims that in June 2012, his father, wife and children were all killed in a rocket attack that destroyed his home in Damascus while he was out refilling a gas cylinder. In his SHEV application he claimed that all of his identity documents were destroyed in this attack so he has not provided any evidence of his identity or of the identity of his family. The applicant's accounts of being born and having lived in Syria and the events which he claims occurred in Syria are based solely on what he has told the Department and are unsupported by any other corroborative evidence.
10. As noted above, in his SHEV application the applicant claimed his identity documents were all destroyed in the attack on his house. He did not explain how he was able to pay a considerable amount of money to leave Syria, obtain a false passport and buy an airline ticket without any access to his identity documents. At his SHEV interview the delegate asked the applicant if he had his wallet with him when he left the house to purchase a new gas cylinder. The applicant said that he did. He then claimed he destroyed the identity documents that he had with him that day when he got [a Country 1] passport to travel to Australia. I consider that the applicant was deliberately deceptive in his statutory declaration attached to his SHEV application about his documents being destroyed in a rocket attack.
11. The applicant was legally represented at the primary stage and had ample opportunity to provide evidence of his identity and his family's identity to support his claims. His lawyer advised at the SHEV interview that they planned to gather evidence in support of his claims which was not provided. The applicant claimed in his SHEV application that he had attended school and training courses in Syria, he held a Syrian bank account, he worked as [an occupation] in [workplaces] in Syria and he had been hospitalised in Damascus for a number of days. In these circumstances, I consider that evidence of his life in Syria or some indication of a connection to Syria, could have been sought and potentially provided to the Department.
12. The applicant has not provided any evidence to support his claims about the rocket attack on his family home and the deaths of his family members. He has not provided any evidence such as a media article about an attack in or around Damascus in June 2012. He has not provided a police report, coroner's report or death certificates for his family members or any other documentation which should be available on the deaths of people who lived their whole lives in Syria.
13. At the SHEV interview the delegate put [Social media] information to the applicant which may indicate that his three sons are alive and living and studying in [Country 6] and therefore it would not appear that they died in a rocket attack as claimed. The delegate asked the

applicant what his mobile phone number was and confirmed that it was the same number linked to a [social media] account in the name of 'KS', a name similar to his own. The applicant confirmed he had a [Social media] account and did not deny that it was his [Social media] account when the delegate told him the name of the account. He later did not submit any evidence to contradict the delegate's findings about that [Social media] account being his, such as another account in his name or another account linked to his email address or phone number.

14. The delegate showed the applicant photographs of people who were friends of KS on [Social media] who have the same name as people who have received remittances from the applicant since he has been in Australia. The applicant appeared to have interacted with these people on [Social media] which suggested that they were known to him. In response to that evidence the applicant stated that something was wrong, it was not his account even though it was linked to his name and phone number.
15. The delegate then showed the applicant a printout from a [Social media] account in a name almost identical to the name of one of the applicant's claimed sons, 'AS'. This printout included a comment from the KS [Social media] account. The applicant said that he did not know the person whose photograph appears in AS's profile. The delegate showed the applicant a second printout from AS's account which lists his friends. Two of these friends are named 'OS' and 'MS' which are almost identical names as the names of the applicant's other two claimed sons. The applicant said that he did not recognise any of these names and said that his surname is different. I note that the difference between the surnames is only the addition of the prefix 'Al'. The delegate showed the applicant photographs from [Social media] of the three boys together and I note that their appearance is not inconsistent with the applicant's sons' stated birthdates. In response to this information, the applicant said that he did not recognise the people in the photographs and repeated that he did not know the names. He suggested that maybe his account has been hacked and then stated that he has been told that it has been hacked. [Social media] told him about this and sent him a code to his mobile to be sure. This was the first point in the interview that the applicant raised this claim. The delegate asked him when this happened. He responded that it happened three to four days ago. I consider it highly coincidental that this claim was made by the applicant only after potentially adverse information was put to him. Further, the applicant has provided no evidence from [Social media] to support this claim even though he made other post interview submissions of a general nature about [Social media] security.
16. In a post interview submission made by the applicant's representative on 4 December 2017 it was submitted that the applicant was not asked whether he was known by the name on his [Social media] account. This is not correct, at 45 minutes into the interview the delegate clearly stated the name on the [Social media] account which the applicant confirmed was his account. The representative made submissions about holes in [Social media] security allowing [Social media] users to link multiple phone numbers to their account and which does not force them to remove old ones once they have stopped using them. It was suggested that the applicant's account with the profile name of KS is not the only account linked to his mobile number. Submissions were also made as to the ease of hacking into [Social media] accounts. I consider that in the interview the applicant confirmed his current phone number and [Social media] account name which were linked. He only made the claim that his account was compromised after the adverse information was put to him. It is not apparent why someone would use his phone number to set up an account in a very similar name to that of the applicant or why they would have friends with the same or similar names as his sons and with people with whom he had been recorded as remitting money. When considered as a whole, I do not accept the applicant's claim that it was not his [Social media] account. I

consider that there is a direct link through his phone number to his [Social media] page and then a link to what is likely to be his three children as well as other people to whom he is financially linked. I find that the AS [Social media] account belongs to the applicant.

17. The applicant has not provided any evidence to support his assertion that he had three sons and that they died. I do have information before me about people linked to the applicant with reasonably similar names to the applicant's claimed children, who appear to be close, including being [Social media] friends and being photographed together, and with whom the applicant has interacted. When I consider this information in the context of the other problematic evidence before me, I am willing to accept that the applicant has three sons, but I do not accept that the applicant's family was killed by a rocket which hit their home. I consider that the information before me points to a strong possibility that the applicant's sons are alive and living in [Country 6].
18. At the SHEV interview the delegate put information to the applicant which may indicate that he has strong ties, including family ties, to Jordan. This evidence contrasts with the applicant's claims to be from Syria and not to have any remaining living family members. The applicant was asked if he has sent money from Australia. He responded yes. The delegate showed the applicant a photograph of a [Social media] friend who he claimed not to know. It was put to the applicant that there were records that he sent over \$2000 to that person using his own photo identification. The applicant responded with 'maybe' and then said he did not send it. He was asked about another person who he denied knowing or sending money to. He then said he had not sent money. The delegate noted that he had previously stated that he had sent money. In response he said he hasn't done if from here, he sent it through a friend in Syria and he has personally made no remittances from Australia. The delegate put to the applicant that he had credible information that someone with the applicant's photo identity document has remitted money overseas which he denied. He was shown further photographs of [Social media] friends who had received remittances but denied knowing them. The applicant's representative who was present at the interview confirmed the applicant's denials noting that the applicant held a South Australian proof of age photograph identity card but noting that identity theft is an issue in today's society. I find it very coincidental that the applicant's [Social media] account was hacked and friends added who had the same identity as people who received money from a person who had possibly stolen his South Australian proof of age card. When asked, the applicant was not able to offer an explanation as to why these people largely had similar names to the applicant such that they would appear likely to be family members and some of the remittances were described as family support. All of these people appeared to reside in Jordan although on occasion some money was sent to [Country 7].
19. I have further concerns about the remittance evidence and the applicant's claim that he did not make these remittances and that he had his identity stolen. There are a significant number of transactions made using the applicant's photographic identity card, yet no indication that any of these remittances were considered suspect by the people checking the photograph as the pattern of remittances was allowed to continue. The remittances appear to have been made from [City 1 Australia] and then [City 2 Australia] which correlates with the applicant's advice that he lived in [City 1 Australia] until 2015 and then moved to [City 2 Australia]. The applicant's representative undertook at interview to make enquiries about the misuse of the applicant's identity but in post interview submissions did not provide any evidence which supports that the applicant's identity was stolen or misused. In their post interview submission of 4 December 2017 the representative stated absolutely that the applicant emphatically denies knowing the people in the photographs, let alone being related to them. He denies ever visiting Jordan. He absolutely and emphatically denies transferring

money outside Australia and does not know how his identity has been used to transfer money outside of Australia. In support they attached some articles of a general nature about identity theft and crime. They did not provide any information in support of the applicant's own claimed experience such as a police report. After that, on 5 December 2017 the applicant's representative provided a further post interview submission. In that they advised that they relied on their previous submission but provided this additional information. They claim they had telephone contact with the applicant, who further instructed that about two and half to three years ago, while he was living in [City 1 Australia], he lost his wallet. He had to close his [Bank] account and cancel his bank card because there was unusual activity and unusual transactions in his bank account. He also lost his Proof of Age identity card at this time as it was in his wallet, resulting in him having to obtain a new Proof of Age identity card. He instructs that he thinks this might have something to do with the money transfers pointed out during the interview, but maintains his emphatic denial of having transferred money. The applicant did not explain why the bulk of the remittances were to people with the same surname and other similar family names as him and his father.

20. I am unpersuaded by the applicant's late claim that he was a victim of identity fraud after losing his wallet and I do not accept that he did not in fact make the remittances to family members in Jordan. The applicant has not provided any evidence of the loss of his wallet or reissue of identity documents or concerns raised with the bank. The remittances were to people with similar names. The evidence strongly suggests that the applicant had links to some of those people through his [Social media] account. The remittances originated from [City 1 Australia] and [City 2 Australia], both places that the applicant resided in that time period. Having regard to all of these factors, I am satisfied that the financial transactions were carried out by the applicant and that he has not been truthful in his account of these matters. When considered in conjunction with my other concerns about the applicant's evidence, and the lack of any evidence tying him to Syria, the evidence strongly suggests that the applicant has family members in Jordan to whom he regularly makes payments of family support. The evidence before me indicates that the applicant has ties to Jordan and not to Syria.
21. Adding to my concerns about the applicant's evidence that he faced harm in Syria are a number of inconsistencies and lack of specificity in his accounts of his claims about his life in Syria and the trouble he faced there. The applicant provided a copy of a psychological assessment undertaken at [an] Immigration Detention Centre [in] October 2017. The applicant provided an account of torture and trauma to the psychologist which mirrors his claims in his SHEV application and additionally outlines difficulties he faced in Australia. He accepted counselling "in order to cope with grief, loss and his daily challenges, and also to cope with the impact of his legal complications". In that account the applicant reported being imprisoned in Syria for six months and being tortured on a daily basis. This is not consistent with his SHEV interview in which he stated that he was called up, questioned and beaten once a week. He claimed that after his release he was followed on a daily basis and his house continually searched. In his SHEV interview he stated that they came to his house three to four times after his release once every one to two weeks. The psychologist's report records the applicant as having anxiety and that his main worry was his unknown future and legal situation which has recently exacerbated his symptoms. He also received a diagnosis of depression which the psychologist attributed to the house bombing and loss of his father, wife and children. I note that this was self-reported and not supported by any corroborative evidence. He also reported symptoms of PTSD. The psychologist noted that the applicant had not been assessed or treated previously. It would appear that after being released from immigration detention, the applicant spent approximately five years in the Australian community where he lived and worked without seeking psychological treatment.

22. In his Arrival Interview the applicant stated that the police came to his house and picked him up and put him in prison for one and a half months where he was questioned and tortured before being released. He claimed he came to the attention of the police after saying stupid things about the presidency and the government. In his SHEV application he stated that he went to the closest police station and tried to find out who was responsible for the attack on his family. He was angry; he fought with a police officer at the station; and he was detained and charged with assaulting the police officer and working with the ongoing uprising against the Syrian government. He claimed that he was detained for six months. During this time, he was interrogated, beaten and brutally tortured. In his SHEV interview he claimed he was asked about his father's political opinion and he said that his father had no political involvement. I note that in his Arrival Interview and SHEV application he had indicated that his father worked for [Militant organisation] before his mother died. He made no reference to that in his SHEV interview. Based on his inconsistencies and failure to raise this matter at interview I do not accept that his father worked for [Militant organisation].
23. At interview the applicant was asked questions about his education, his addresses in Syria, Syrian political figures and events as well as his claims. He was unable to recall the name or location of the primary school he attended, he appeared to have a very limited knowledge of key political figures and events in Syria. He provided limited detail about what happened to him once he was released from police detention. He claimed he tried to commit suicide, woke up in a hospital and then left and took a taxi to his friend's place. He provided no explanation about how he was released and how he was able to take a taxi given his circumstances. He did not explain how he was able to access the funds to depart Syria. While it is natural that there would be inconsistencies in the applicant's account of what happened to him over the passage of time and including if he experienced trauma, however, when considered in the context of the other concerns I have as to the truthfulness of the applicant's account, I consider that these inconsistencies do raise further credibility concerns.
24. I have considered the applicant's evidence cumulatively as to his nationality, his home location, his family circumstances, and the events which he claimed caused him to leave Syria and seek asylum in Australia and I do not accept that the applicant has been truthful about those matters. As noted above, he was not able to provide evidence for any of his claims and his verbal evidence provided at his SHEV interview was not particularly credible. I consider that the applicant has attempted to conceal the truth about his origins and, while I am willing to accept that he is of Palestinian origin or heritage, I do not accept that he is a former resident of Syria and I do not accept any of his claims relating to events in Syria including that his family were killed in a rocket attack, that he was arrested, detained and tortured by Syrian officials or that he was further harassed after release from hospital.
25. I have considered whether the applicant has demonstrated a link to any other country. The financial transactions information obtained by the delegate show that he has been transferring money on a regular basis to people including those with an almost identical surname, who live in Jordan, primarily in Amman. He has tried to conceal his involvement in these transactions as well as his relationship with these persons. There is nothing in the material before me which explains why he would want to do so, other than not wanting to be linked with these persons and/or Jordan. I consider that the most likely explanation for concealing this link is that these people are other family members that he did not want the Department to be aware of and that he did not want his link to Jordan to be identified. Having regard to this and to my finding that he is not from Syria, I am satisfied that the applicant has a familial connection to Jordan. I note that the applicant advised at interview that both his parents were born in Palestine. They are from [Suburb] on the West bank. They left there a long time ago. He claimed they went to Syria in 1947. I do not accept that they

went to Syria and I find it very likely, in the context of the applicant's connections to people with the same surname in Jordan, that they in fact went to Jordan.

26. The Australian Department of Foreign Affairs and Trade (DFAT) reports¹ that Palestinian refugees arrived in Jordan in three waves. The first was as a result of the 1947–1949 Arab–Israel war, when an estimated 350,000–470,000 Palestinians were displaced from what became Israel. Of these, between 70,000 and 100,000 were in 'East Bank' Jordan (that is, to the east of the Jordan River) where Amman is located. Given my findings that the applicant has not been truthful about having lived in Syria, the lack of evidence as to any connection to Syria, combined with his attempt to disguise his connection to Jordan, and his frequent contact in the form of remittances and some [Social media] communication with persons in Amman, Jordan with similar family names, I am satisfied that the applicant has a familial link to and was a resident of Jordan prior to travelling to Australia. I am willing to accept his claim that he has Palestinian heritage as a consequence of his family leaving the West Bank in 1947.
27. DFAT reports that² the term 'Palestinian' denotes a person or people that identify as having Palestinian background. Most Palestinians in Jordan are Jordanian citizens. The majority of up to 70 per cent of Jordan's population of 7.9 million (July 2014 estimate) is estimated to be of Palestinian descent. In 1948, Jordan captured what it later dubbed the 'West Bank', annexing the territory. All Palestinians (including refugees) in both the East and West Banks were later granted full and unconditional Jordanian citizenship with the same access to public services, including health and education, as other Jordanian citizens³. I find that Jordan is where the applicant resided before coming to Australia, that the applicant is a national of Jordan and that Jordan is the receiving country for the purpose of this review.

Refugee assessment

28. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

29. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report - Palestinians in Jordan and Lebanon", 2 March 2015, CISEC96CF1255, 3.4

² Ibid, 3.1

³ Ibid, 3.2

- the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
30. I have found above that the applicant has not been truthful and I do not accept that he has come from Syria, and I do not accept any of his claims relating to events in Syria. I also do not accept that he lost his identity documentation. I am satisfied that the applicant is a national of Jordan and that Jordan is the receiving country for the purpose of this review. In his SHEV interview the applicant was asked whether he wished to make any claims for protection in relation to any country other than Syria. The applicant said no.
31. As noted above, most Palestinians in Jordan are Jordanian citizens. The majority of Jordan's population is estimated to be of Palestinian descent. In 1948, Jordan captured what it later dubbed the 'West Bank', annexing the territory. All Palestinians (including refugees) in both the East and West Banks were later granted full and unconditional Jordanian citizenship with the same access to public services, including health and education, as other Jordanian citizens⁴.
32. DFAT reports⁵ that 'wasta' and some official discrimination does exist, however, the socio-economic levels of the Palestinian population in Jordan are comparable to those of other Jordanians. Forty-one per cent of Palestinians in Jordan participate in the workforce, a rate comparable to other regional Palestinian populations and the same as the wider Jordanian workforce participation rate. Palestinians tend to work in the private sector in Jordan. Generally speaking, most Palestinians in Jordan have little wasta when dealing with government bureaucracy, which is dominated by East Bankers⁶. The applicant has not made any claim to have faced official discrimination or harm as a result of wasta in Jordan and I am satisfied that he does not face a real chance of harm because of his Palestinian heritage.
33. DFAT reports⁷ that the health status of the Palestinian population is, likewise, essentially identical to other Jordanians (noting that the overall population's health status is wide-ranging, in line with the wide-ranging socio-economic levels that exist in the country). For instance, a 2008 study in the Bulletin of the World Health Organization reveals there is "essentially no difference" between the infant mortality rates of Palestinians and other Jordanians in Jordan. The applicant has claimed to be undertaking counselling in Australia and he has provided a Psychological Assessment Report dated [October] 2017. This report was prepared after an assessment at which the applicant provided the same version of events in Syria which comprise his application for protection. It is stated that he said firmly that he does not have any suicidal thoughts or ideation and his suicide risk was assessed as low. He was assessed as displaying symptoms of depression and anxiety as well as issues of grief. It was also assessed that he has been re-traumatized by experiences and complications in Australia. It was recommended that he be encouraged to continue counselling. For the reasons I have already given, I do not accept his account of events in Syria and as a consequence, I do not accept that he has been suffering psychological distress because of those claimed events.

⁴ DFAT, "DFAT Thematic Report - Palestinians in Jordan and Lebanon", 2 March 2015, CISEC96CF1255, 3.1, 3.2

⁵ Ibid, 3.7

⁶ Ibid, 3.8

⁷ Ibid, 3.9

34. I have noted above that Palestinians in Jordan enjoy the same access to health services as Jordanian citizens. DFAT also notes⁸ that most Jordanians have a form of health insurance that is paid by their employer and this insurance subsidises most common medical expenses. The Jordanian state subsidises some medical expenses for those without insurance (including basic hospital treatment), although these people will typically pay more than insured Jordanians. The information does not indicate that Palestinians in Jordan are denied access to medical treatment for any reason or that Jordanian health services are ineffective or insufficient. I also note that the applicant has not been hospitalised or placed on any pharmacological program and noting the information cited above, I am satisfied that he does not face a real chance of harm because of his psychological health.
35. Having regard to all of the information and evidence above, I am satisfied that the applicant does not face a real chance of harm because of any official, societal or wasta discrimination in Jordan, or because of his psychological condition. I also note that the DFAT report does not indicate that there are any anti-Sunni militia active in Jordan or that Palestinians in Jordan and/or Sunnis have been targeted or harmed for any reasons associated with religion. Having considered all of the information above, I am satisfied that the applicant does not face a real chance of harm for any reason if he was to be returned to Jordan.

Refugee: conclusion

36. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

37. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

38. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person
 - the person will be subjected to torture
 - the person will be subjected to cruel or inhuman treatment or punishment, or
 - the person will be subjected to degrading treatment or punishment.
39. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.

⁸ DFAT, "DFAT Thematic Report - Palestinians in Jordan and Lebanon", 2 March 2015, CISEC96CF1255, 3.30

40. I have found that the applicant does not face a real chance of harm for any reason in Jordan. As 'real chance' and 'real risk' have been found to equate to the same threshold⁹ and for the same reasons given above, I am also satisfied that there are not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's removal to Jordan, the applicant will face a real risk of significant harm for any reason.

Complementary protection: conclusion

41. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

⁹ *MIAC v SZQRB* (2013) 210 FCR 505

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of 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 non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.