



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PALESTINIAN TERRITORIES
IAA reference: IAA18/04940

Date and time of decision: 26 June 2018 10:02:00
M Brereton, 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 an referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Sunni and an Arab from Gaza in the Palestinian Territories. He left Gaza legally on about 9 March 2013 and travelled to Egypt by road, from where he travelled by air to [Country 1]. He departed [Country 2] by boat and arrived [in Australia] on 25 April 2013. On 4 January 2017, he lodged an application for a temporary protection visa (TPV). A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa on 4 May 2018.
2. The applicant claims to fear harm from Hamas because: he refused to join that organisation; he hit a Hamas officer and was arrested; his brother is a member of Fatah; his family group is linked to Fatah; and he will be imputed as an opponent to Hamas. He also claims to fear harm because of his hairstyle and dress.
3. The delegate accepted the applicant's claims as to identity, origin and suffering from depression. The delegate accepted that the applicant and his mother were harassed and humiliated on one occasion by Hamas. The delegate did not accept that Hamas tried to forcibly recruit the applicant or his brother, or that another brother was or is a member of Fatah. The delegate did not accept that the applicant had an adverse profile with Hamas because of his family, or that he had been arrested, detained and tortured. The delegate found that there was no real chance that the applicant would be persecuted by Hamas for any reason or that he would face harm for being a returned asylum seeker from a Western nation. The delegate found that the applicant is not a person in respect of whom Australia has protection obligations.

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) (the review material).
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 Sunni and an Arab who was born and raised in Gaza in the Palestinian Territories. He is stateless and does not have a right to enter any other country.
 - In about [year], after he had finished his schooling, Hamas began sending him notices asking him to join. He did not want to do so because he wanted a life of peace. Hamas stopped him getting employment because he did not join.
 - His older brother, S, was a member of the opposition Fatah party. Hamas detained and tortured S.
 - In about 2012, the applicant saw his cousin wounded in a gunfight between Hamas and a neighbouring family group. This incident frightened him.
 - In January 2013, the applicant was taking his mother to hospital for treatment. Hamas officers stopped the car and began taunting and humiliating the applicant because of

his haircut. Hamas officers attempted to shave his head so his mother tried to defend him. The Hamas officers began to humiliate his mother as well and told the applicant to report to the "Intelligence Centre" in town.

- The applicant went to the Intelligence Centre the next day and was detained, tortured and humiliated for one day. He felt threatened and began to make plans to escape Gaza. He left legally via the [Crossing 1 border] into Egypt [Country 1] on 9 March 2013.
- During the 2014 war, a distant relative and her family were killed when a missile hit their home.
- The applicant fears persecution from Hamas and the authorities cannot protect him. He cannot re-enter Gaza because the borders have closed.

7. At the interview with the delegate on 16 April 2018 (the interview), the applicant claimed:

- There was a member of Hamas who lived in the applicant's area. This person continually harassed the applicant to join but the applicant did not do so. The applicant's name was put on a Hamas list so that employers would not give him work.
- During the incident with his mother in January 2013, Hamas officers pushed the applicant and the applicant pushed them back. The officers could not do anything to the applicant because his mother was present so they arrested him two days later. They detained him for two days, questioned and tortured him, and shaved his head.
- The officer that the applicant pushed was a person who lived in the applicant's area. This officer was offended by the applicant pushing him.
- Hamas continued to harass the applicant because he had pushed a Hamas official. He was arrested and threatened a number of times because he wore shorts and because of his hairstyle. Later in the interview he said that he was only arrested on the one occasion following the incident with his mother.
- After the applicant left Gaza, his younger brother, O, was harassed to join Hamas. O refused to join and experienced similar difficulties to the applicant.
- The applicant's family group is considered to be aligned with Fatah. Hamas wants to recruit members of this family group.
- The applicant's mother was on a list to go to [Country 1] for medical treatment but was not allowed to leave Gaza. When questioned further, the applicant said that she was not stopped from leaving but there were many people in the queue ahead of her and the border was only open for a short time, so she could not cross. She later died because of her medical condition.
- He left Gaza on a legal passport but he has lost this passport.

8. In the post-interview submissions the applicant claimed:

- He actually punched the Hamas officer, who was a high ranking officer and was also a person who lived nearby. This officer "will not let it go" because the incident undermined his authority.
- After the applicant left Gaza, his father was informed by someone that the officer will not leave the applicant alone and will make false allegations to put him in prison.
- The borders in and out of Gaza are currently closed. Insecurity in Gaza continues and in 2018, the Israeli security forces shot a Palestinian youth in the border area.

- A medical referral dated 27 April 2018 reports that the applicant has presented with depression and has been referred to a psychologist.

Refugee assessment

9. 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

10. 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
 - 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.
11. The applicant claims to be an Arab and a Sunni from Gaza in the Palestinian Territories. He has provided copies of a birth certificate and identity card to support his claims as to identity. He also claims to have been issued with a passport by the Palestinian Authority and to have lived in Gaza from his birth until he left to come to Australia.
12. The Australian Department of Foreign Affairs and Trade (DFAT) country information report dated 15 March 2017 sets out the historical development of the Palestinian Territories. The Territories, which are within Israel, currently comprise two separate areas; the West Bank, a large territory to the east of Jerusalem, which includes the cities of Nablus, Ramallah and Hebron; and Gaza, which is a smaller territory on Israel’s south-west coast, including Gaza City and Rafah. The West Bank is currently under the control of the Palestinian Authority while Gaza has come under the effective control of Hamas. DFAT reports that Palestinian residents of Gaza can obtain travel documents under the seal of the Palestinian Authority and these documents are accepted by 37 countries.¹ The Palestinian passport does not convey citizenship of a state (in the absence of a Palestinian state) but it does entitle the holder to leave and re-enter, in the applicant’s case, Gaza without the need for additional travel and re-

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report Palestinian Territories March 2017", 15 March 2017, CISED50AD558, at p 33.

entry permits² (although there have been recent changes to the situation at the border crossings, which I have considered further below). I accept that the applicant was able to obtain a passport in his own name and I do not doubt the *bona fides* of his other identity documents.

13. I also note information in the DFAT report that restrictions on freedom of movement enforced by Israeli authorities make it almost impossible for Palestinians to move between the West Bank and the Gaza Strip. Israel maintains tight control of the Palestinian Population Registry and the residency status of all Palestinians; for example, there are separate permits that clearly denote if an individual is from Gaza or from the West Bank. It is not legally or physically possible to move between the West Bank and the Gaza Strip, except in exceptional circumstances.³
14. Having regard to the information in the material I accept that the applicant is a Sunni and an Arab from Gaza in the Palestinian Territories and that he is stateless. I am satisfied that the Palestinian Territories is his place of birth and former habitual residence and that pursuant to s.5 of the Act, this is the receiving country for the purpose of this review. I am also satisfied that if he were to return to the Palestinian Territories, he would return to Gaza.

Recruitment/forcible recruitment

15. The applicant claims that since [year], Hamas has been attempting to recruit him and has placed him under pressure to join. This timeframe is consistent with DFAT reporting which notes that Hamas (Islamic Resistance Movement) is an Islamist organisation and political party founded in 1987 as an offshoot of the Egyptian Muslim Brotherhood. Hamas won an outright majority of seats in Palestinian Legislative Council elections in January 2006 but following failed attempts at a Fatah-Hamas power-sharing government, Hamas violently took control of the Gaza Strip in 2007 and became the *de facto* authority in Gaza.⁴
16. The applicant has not claimed to have any skills or training that would mark him out as being different to other Palestinian youths. The only particular profile he claims is that his family group (the A group) is seen as being supporters of Fatah and that therefore Hamas wants to recruit members of the family. While I am prepared to accept that as a member of this family the applicant may have been of initial interest to Hamas, there is nothing in his profile to indicate that he would be of ongoing interest to Hamas for the next five years after he declined to join. According to DFAT, although statistics on forced recruitment are not available, anecdotal evidence indicates that it is not difficult for Hamas' armed wing to find supporters, given there are few options for employment in Gaza and many young men are willing to join the armed fight. There are also limited options for entertainment and leisure in Gaza. Hamas runs summer camps for schoolchildren and these camps reportedly involve some level of militant training, including weapons handling and lessons on Hamas doctrine but do not result in forced recruitment. About 100,000 children attend Hamas' summer camps; 50,000 attend the alternative camps run by Palestinian Islamic Jihad, but the majority, around 250,000, attend the more popular summer camps run by the United Nations.⁵

² Norwegian Refugee Council, "Undocumented and Stateless: The Palestinian Population Registry and Access to Residency and Identity Documents in the Gaza Strip", 1 January 2012, CIS961F9402699, at p 41; Maryellen Fullerton, "Comparative Perspectives on Statelessness and Persecution", Kansas Law Review, 1 May 2015, CISEC96CF15525, at p 869.

³ DFAT, "DFAT Thematic Report Palestinian Territories March 2017", 15 March 2017, CISED50AD558, at p 31.

⁴ *ibid.*

⁵ DFAT, "DFAT Thematic Report Palestinian Territories March 2017", 15 March 2017, CISED50AD558, at pp 16,21.

17. The applicant has not claimed that he was ever selected for and/or asked to attend Hamas camps or other activities while he was at school. I also note that the majority of students in Gaza reportedly do not attend the Hamas camps and there is no information to indicate that they are targeted for harassment, threats or forcible recruiting for not doing so.
18. DFAT reports that there are Fatah supporters in Gaza as well as Hamas supporters in the West Bank, and that both groups of people have been subject to violence, harassment and moderate levels of official and societal discrimination. DFAT assesses that the levels of such activity is linked to individual profiles and increases in frequency and severity if an individual was a high-profile and active critic of either Hamas in Gaza or Fatah in the West Bank.⁶ The applicant has not claimed that he has a high profile or that he has ever been accused of being an active critic of Hamas.
19. The applicant claims that his family group, A, is a well-known group in Gaza and is a renowned political opponent of Hamas. He said that A is a big family and none of them support Hamas, which is why Hamas keeps harassing members of this family to join Hamas. He said that the leader of this family group is an elder, like a chief or a mayor, but the applicant does not have a close relationship with this person. I consider it is plausible that Hamas may have approached the applicant in part because of his relationship to this family group but the material before me does not indicate that the applicant had any role or profile in the family group that would have marked him out for the level of recruitment he claims that he faced.
20. Having regard to the above, while I accept that Hamas asked the applicant to join in 2008, I am not satisfied that the applicant's profile or skills were such that he would have been of any ongoing interest to Hamas for recruitment. I do not accept that he was continually harassed, prevented from obtaining employment or subject to any other intimidation or adverse interest for this reason.
21. The applicant has not provided any evidence that his younger brother O had, or has, any particular skills or profile that would mark him out to Hamas. Having regard to this and to my reasons above, I do not accept the claim that the applicant's younger brother O has been targeted for forcible recruitment.

Brother's membership of Fatah

22. The applicant claimed that his eldest brother, S, was a member of Fatah but when the delegate asked him what his brother's role was, he said that S was a normal employee. When the delegate asked what S did for Fatah, the applicant said that he was a [occupation]. When the delegate asked how S showed his support for Fatah, the applicant said that he did this by working with them. The applicant said that S stopped working for Fatah in about 2008 because Hamas kept arresting him, putting him in jail and torturing him. He said that S could not leave Gaza because he is married and there is no ability for him to travel.
23. I am prepared to accept that S worked as a [occupation] until around the time that Hamas took over Gaza; however, the applicant's evidence does not indicate that S was a member, active supporter or otherwise actively associated with Fatah, or that S was a critic of Hamas. It is plausible that when Hamas took control of Gaza it removed people who were not members or supporters of Hamas from public service positions and on that basis I am prepared to accept that S was unable to continue in his role as a [occupation]. While it is also plausible that S faced some intimidation or adverse attention from Hamas at that time, the applicant has not claimed

⁶ DFAT, "DFAT Thematic Report Palestinian Territories March 2017", 15 March 2017, CISED50AD558, at p 19.

that S has faced any further or ongoing adverse interest from Hamas for this reason in the nearly 10 years since the takeover. Having regard to all of these factors, I do not accept that S was, or is, a member of Fatah, or that he was arrested and tortured. I do not accept that the applicant has faced, or will now face, any adverse interest from Hamas because of S.

Wounding of cousin

24. In his statement with his TPV application the applicant claimed that his cousin was wounded during a gun fight between Hamas and a neighbouring family group (not the applicant's family group) in 2012. The applicant witnessed this event and was frightened by it because although it was a random event, he thought it could have been him who got shot. He did not refer to or expand on this claim at the interview and he has not claimed to have suffered any harm, harassment or interest from Hamas or any other organisation or person as a result of this incident. He has not claimed that this was anything other than a random event or that his cousin was anything more than an innocent bystander. I am not satisfied that the applicant has any adverse profile arising from this incident or that he faces a real chance of harm arising from this incident.

Incidents with Hamas

25. Aspects of the applicant's story have developed during the course of his application. He has been consistent in his claim, and I accept, that he was taking his mother to hospital when they were stopped by Hamas officials at a checkpoint. The applicant claims that the officials began humiliating him because of his hairstyle and indicated that they were going to shave his head.
26. Information before me confirms that Hamas has enforced a conservative interpretation of Islam in Gaza that discriminated against women. Authorities generally prohibited public mixing of the sexes. Hamas's "morality police" also punished women for behaviour that was deemed inappropriate, such as riding motorcycles, smoking cigarettes or water pipes, leaving their hair uncovered, and dressing "inappropriately" in Western-style or close-fitting clothing such as jeans or T-shirts.⁷ Similarly, the United Nations High Commissioner for Refugees (UNHCR) reports that Hamas reportedly harasses, fines and punishes women and men for perceived infractions of traditional and Islamic norms and other behaviours considered "un-Islamic". Hamas reportedly also enforces gender segregation and conservative dress codes in public. These restrictions are reported to have a particularly negative impact on women.⁸
27. There is no other information that indicates that men's hairstyles may attract adverse attention but I take into account that the applicant has also referred to being harassed because of wearing shorts, and this is consistent with the information above in relation to conservative dress codes. I am prepared to accept that he was stopped by Hamas officers in 2013 and was then subjected to harassment and intimidation because of his appearance, including his hairstyle.
28. The applicant claimed in his statement that he was told to report to the Intelligence Centre in town the next day. Although he claimed that he was kept at this Centre for one day, humiliated and tortured, he did not refer to any incidents of physical violence while he and his mother were at the checkpoint. At the interview however he claimed that a Hamas official pushed him and so he pushed that person back. Rather than being told to report to the

⁷ United States Department of State (USDOS), "Country Reports on Human Rights Practices for 2017 – Israel, Golan Heights, West Bank, and Gaza", 20 April 2018, OGD95BE927321, at p 105.

⁸ United Nations High Commissioner for Refugees (UNHCR), "Country of Origin Information on the Situation in the Gaza Strip, Including on Restrictions on Exit and Return", 23 February 2018, UN3079B835, at p 20.

Intelligence Centre, he claims that he was actually arrested two days later and taken to the Hamas office where he was detained for two days, questioned and tortured. In his post-interview submission, he claims that he actually hit the Hamas official who was a resident of his local area and a high ranking officer.

29. It is plausible, and I accept, that when the applicant was stopped and questioned, there was a degree of confrontation which may have included comments about the applicant's appearance and hairstyle. I am concerned that the applicant did not refer to any physical retaliation or arrest in his TPV statement. I consider that the difference between being asked to attend an office, and being involved in a violent confrontation and later being arrested, is significant. I do not consider it plausible that the applicant would not have included these issues in his statement if they were true. Further, although the applicant claims that he engaged in violence against Hamas officers, he said that he was not arrested immediately. He claims that the officers could not arrest him because his mother was present but given Hamas' role as the *de facto* authority in Gaza, it is not plausible that its officers would not arrest a person who pushed or punched them.
30. I also consider that the development of the claim from "Hamas officials" to a high ranking local officer with a personal grudge against the applicant indicates that he has been embellishing his story to enhance his claims for protection. If such a person had a personal grudge, wanted to harm the applicant, was threatening to make false allegations and "will not let it go", it is implausible that the applicant would have been released from custody. I note the applicant's evidence that after he was released he was spoken to on one or more occasions in relation to his attire and although he did refer in the interview to being arrested on those occasions, he then confirmed that he was in fact only arrested on the one occasion following the altercation at the checkpoint. Noting the country information cited earlier, I accept that he may have been spoken to in relation to wearing shorts but I do not accept that he was arrested or detained, or that these incidents had anything to do with an adverse personal profile or a vendetta by a high ranking officer. I also note that neither the high ranking officer nor any other member of Hamas ever visited the applicant's home after the arrest, nor has any member of Hamas harassed or questioned his family about his whereabouts.
31. Having regard to all of the above, I accept that the applicant and his mother had a confrontation with Hamas which led to the applicant being harassed about his hairstyle and Hamas attempting to cut his hair. I accept that the applicant was required to later attend the Intelligence Centre, where he was detained and physically mistreated. I do not accept his claims that he engaged in violence against Hamas at the checkpoint, that he punched a high ranking Hamas officer or that that officer, or Hamas, has any grudge or vendetta against the applicant. I do not accept that the applicant is of any ongoing interest to Hamas because of the incident with his mother at the checkpoint. While I accept that he was spoken to on at least one occasion because of wearing shorts, I do not accept that this occurred because of any adverse profile or that he has any adverse profile with Hamas as a result of being spoken to or otherwise.
32. The applicant claims that Hamas has imputed him with an adverse political opinion because of his refusal to join, and because of his haircut and dress style. I have found above that the applicant was not subject to any adverse interest from Hamas because of his refusal to join. He has not claimed to have said or done anything that may constitute active criticism of Hamas. I note from the country information cited above that Hamas has enforced dress codes but the information does not indicate that persons who breach Hamas' dress codes are imputed as being critics or opponents for this reason alone. Similarly, the information before me does not indicate that males are imputed as opponents or critics on the basis of hairstyles.

I have accepted that at the checkpoint the applicant was humiliated about his hairstyle and that the Hamas officers tried to cut his hair. I also accept that on at least one later occasion he was told not to wear shorts, but I do not accept that he has been arrested, detained or assaulted because of these dress code incidents. I do not accept that these events on their own, or together, are systematic or ongoing harassment of the applicant, or that they indicate that he has been, or will now be, imputed with an adverse political opinion. Having regard to all of the above, I am not satisfied that he faces a real chance of harm from Hamas on the basis of an imputed political opinion.

33. The applicant claims that after he left Gaza, an unnamed person overheard the high ranking Hamas officer saying that he will not let the matter go and that he will make false allegations and put the applicant into prison. I have found above that the applicant is not of any ongoing interest to Hamas, that the incident with the high ranking officer did not occur and that the applicant is not the subject of any grudge or vendetta. I take into account that he exited Gaza legally on his own passport without any interest or harassment from Hamas, and he has not claimed that any Hamas officers (including the officer he claims lives in his local area) have come to the family home looking for him, enquiring as to his whereabouts or making threats to his family. I do not accept that he has any profile or is of any interest to Hamas and I do not accept the claim that the high ranking officer (or any other Hamas officer) made these comments.

Missile strike

34. The applicant claims that a distant relative and her family were killed in 2014, when their house was hit by a missile during conflict between the Israeli forces and Hamas. He has not claimed that any member of his immediate family was harmed in this incident, or that the relatives' house was targeted for any particular reason. I accept that the incident occurred but I find that it was a random event in the context of the wider conflict. The information before me does not indicate that the applicant or his family has been, or will be, targeted by the Israelis or Hamas for any reason. I am not satisfied that the applicant faces a real chance of harm for any reason associated with the missile strike.

Death of the applicant's mother

35. The applicant claims that his mother died in 2017 because she was unable to access medical treatment in [Country 1]. Although he initially claimed that she was prevented from leaving Gaza, in his evidence at the interview he confirmed that she had been granted permission to cross the border but was unable to do so because there were too many people ahead of her on the list, and the border did not remain open long enough. While this event is tragic, I am satisfied that it was the result of unfortunate circumstances and did not involve any targeting of the mother or the applicant's family, any denial of permission or any other discriminatory conduct by any government, organisation or person.

Family group

36. I have noted above that the applicant claims that his family group, A, is renowned for being opposed to Hamas. The applicant has not claimed that he has been harassed, targeted, harmed or suffered any adverse interest from Hamas (apart from the matters considered above) because of his membership of A, but the delegate nevertheless considered whether the applicant may face harm from Hamas for this reason.

37. I have accepted that the applicant may have been approached by Hamas for recruitment in part because of his membership of A. I have not accepted that he was subjected to any ongoing harassment or forcible recruiting attempts, and I have not accepted that his brother, O, has been subjected to forcible recruiting attempts. At the interview, the applicant said that his father, [sibilings]live in Gaza and they face some “harassments” from Hamas but he did not explain what these harassments are. Later in the interview he said that his younger brother, O, faced harassment in relation to recruiting. When the applicant was asked whether “anything else” has happened to his family since he left Gaza, he said that nothing else has happened. I take into account that his family lives in the same house in Gaza and apart from the claims in respect of O (which I have not accepted), the applicant has not claimed that his family has suffered any harm or adverse interest because of being part of A. I have not accepted his claim that S was, or is, a member of Fatah and apart from that claim the applicant has not claimed that his family has been politically active in any way. I also take into account the applicant’s evidence that A is a very large group and he does not have a close relationship with the leader of A. Having considered all of the above, I am not satisfied that the applicant faces a real chance of harm from Hamas because of his membership of A.
38. Having regard to all of the claims, evidence and information above, I am not satisfied that the applicant faces a real chance of harm from Hamas for any reason, now or in the reasonably foreseeable future, should he return to Gaza.

Depression

39. The applicant claims to suffer from depression and produced a medical referral in support of this. The referral is dated 27 April 2018 (after the interview) and records that the applicant has attended a medical centre presenting with depression. There is no recorded past history or current medications. The applicant has not provided any further evidence of treatment, attendance with a psychologist or medication, or having sought any treatment for depression while he has been in Australia. The referral indicates that he has presented with depression but does not refer to any diagnostic testing or evaluation. It does not provide any comment as to how this depression manifests or its likely causation. The referral states that the applicant is not on current medication and does not indicate that the referring doctor has placed him on any medication.
40. In relation to mental health generally, DFAT reports that the health sector in Gaza is overstretched, with inadequate physical infrastructure and severe shortages of essential medication and it is difficult to travel to Israel or other countries to access specialised care. Furthermore, medical systems can be overwhelmed during periods of increased hostility.⁹ The DFAT information does not indicate that health services in Gaza are denied to any person for reasons of race, nationality, membership of a particular social group or political opinion. I also take into account my finding that the applicant is not of any adverse interest to Hamas for any reason, and note that the applicant is not currently assessed as requiring any inpatient or ongoing specialised treatment or pharmacological care. Having regard to these factors, while I accept that there are concerns with the health sector in Gaza, I am not satisfied that the applicant will be denied treatment or access to any medical services he might require. I am not satisfied that he will face a real chance of harm in relation to any medical conditions including his depression.

⁹ DFAT, "DFAT Thematic Report Palestinian Territories March 2017", 15 March 2017, CISED50AD558, at pp 7-8.

Religion

41. The applicant has not claimed to fear harm on the basis of his religion but the delegate nevertheless considered this issue. DFAT notes that Muslims form the majority religion in the Palestinian Territories and rarely experience discrimination on religious grounds. Hamas has implemented a more conservative interpretation of Islam in Gaza and intervenes in activities which it believes contravene Islamic values, and there are also several Salafist militant groups who practice ultra-conservative Sunni Islam but their focus is generally on waging religious war against Israel rather than actions against other Gazans. DFAT assesses that Palestinian Muslims rarely experience official or societal discrimination but those in Gaza occasionally experience a low level of interference from Hamas enforcing conservative religious values.¹⁰ This assessment is supported by other information in the review material.¹¹
42. I have referred above to incidents where the applicant was harassed about his hairstyle and dress. The country information cited previously does not indicate that such incidents, absent any aggravating conduct such as anti-Islamic statements, are likely to lead to a person being imputed with any opinions, beliefs or values that are contrary to Islam.
43. Apart from the claims made in relation to his dress and hairstyle, the applicant has not claimed to have any anti-Islamic opinions, beliefs or values. He has not claimed that he or any member of his family has faced any harm in relation to their religion. While I accept that he has faced low level interference and harassment related in part to his appearance, I am not satisfied that the applicant's dress or hairstyle has led to him being imputed with beliefs, values or practices which contravene Islamic values. I am not satisfied that he faces a real chance of harm for any reason related to his religion.

Returned asylum-seeker

44. The applicant has not claimed to fear harm on the basis of being a returned asylum-seeker from the West but the delegate nevertheless considered this issue. Country information¹² before me does not indicate that returned-asylum seekers have been targeted or harmed in Gaza for having spent time in a Western country. It does however indicate that persons suspected of collaborating with Israel can face imprisonment or death at the hands of Hamas. This information does not indicate that a person who has had no contact with Israel and has not spent any time in Israeli territory would be suspected of collaboration only because they sought asylum in the West. The applicant claims that he left Gaza via [Country 1] and has not spent any time in Israeli territory. He has not claimed that he, or any member of his family, has had any contact whatsoever with Israel or representatives of the Israeli Government.
45. Having regard to the above, I am satisfied that the applicant does not face a real chance of harm for being a returned asylum-seeker who has spent time in the West.

Closed borders

46. The applicant claims that he cannot re-enter Gaza because the borders are closed. The agent submitted that the applicant will need to apply for an [Country 1] visa and then get permission

¹⁰ DFAT, "DFAT Thematic Report Palestinian Territories March 2017", 15 March 2017, CISED50AD558, at p 16.

¹¹ USDOS, "Country Reports on Human Rights Practices for 2017 – Israel, Golan Heights, West Bank, and Gaza", 20 April 2018, OGD95BE927321; UNHCR, "Country of Origin Information on the Situation in the Gaza Strip, Including on Restrictions on Exit and Return", 23 February 2018, UN3079B835.

¹² DFAT, "DFAT Thematic Report Palestinian Territories March 2017", 15 March 2017, CISED50AD558, at p 20.

to cross the border, but the borders are now closed. Neither the applicant nor the agent has provided any further information in relation to the closure of the borders.

47. According to UNHCR¹³ travel to and from the Gaza Strip is subject to severe restrictions and is only possible via the territory's two land crossing points, namely the Erez Crossing, controlled by Israel, and the Rafah Crossing, controlled by Egypt. The Gaza side of the crossings had previously been controlled by Hamas but on 1 November 2017, Hamas handed over control of the Gaza Strip's side to the Palestinian Authority. At the time of the UNHCR report, this had not yet had a positive impact on Palestinians' ability to exit/enter the Gaza Strip via Erez and Rafah Crossings. UNHCR also reports that due to restrictions imposed by Israel, Rafah has become the primary crossing point.
48. Between April and July 2017, the Rafah border crossing was reportedly completely closed for exit from the Gaza Strip, representing the longest period of complete closure for those wishing to leave the Strip since 2007. During 2017, the border crossing opened on only 36 days, representing the lowest number after 2015, when the Rafah Crossing opened for only 32 days. Since the handover of control to the Palestinian Authority, the crossing has reportedly only been temporarily opened on a few occasions and limited to urgent humanitarian cases.
49. UNHCR reports that Palestinians who arrive in Egypt from a third country *en route* back to the Gaza Strip reportedly risk being held at Cairo Airport until the Rafah Crossing is opened. Palestinians travelling via Egypt to/from the Gaza Strip are reportedly escorted from Cairo Airport to the Rafah Crossing and vice versa. Egypt reportedly denies entry to the Gaza Strip for Palestinians who do not hold a Palestinian identity card or passport indicating his/her residency in the Gaza Strip.
50. More recent information notes that Israel has imposed severe restrictions on exits via Erez and has often denied Palestinian applications for travel permits out of Gaza. The Egyptian authorities have continued to open Rafah intermittently and only for a few days at a time and while this is often restricted to movement in one direction, the information indicates that most restrictions apply to those trying to leave Gaza.¹⁴
51. The information before me does not indicate that either of the border crossings have been completely or permanently closed or that Palestinians returnees who have proof of residency in the Gaza Strip are denied permission to cross the border unless they are subject to other factors, such as security concerns.
52. The applicant has provided the Department with a copy of his Palestinian identity card which confirms his residency in Gaza. He has not claimed to fear harm from the Israeli or Egyptian authorities for any reason or to have any adverse security profile with either government. Further, as noted above, the Palestinian side of the border crossings is now controlled by the Palestinian Authority. I accept that the applicant may face some delay and uncertainty in re-entering Gaza but the information before me does not indicate that (as the holder of an identity card and Gaza residency) he will be denied access to Gaza, or that he will be subject to any harm from any of the authorities while waiting for the border to open. I am not satisfied that he faces a real chance of harm because of the border situation.

¹³ UNHCR, "Country of Origin Information on the Situation in the Gaza Strip, Including on Restrictions on Exit and Return", 23 February 2018, UN3079B835, at pp 22-28.

¹⁴ US Department of State, "Country Reports on Human Rights Practices for 2017 – Israel, Golan Heights, West Bank, and Gaza", 20 April 2018, OGD95BE927321, at pp 95-97.

53. Having regard to all of the evidence and information above, I am not satisfied that the applicant faces a real chance of harm: from Hamas for any reason; because of his religion; arising from his medical condition; as a returned asylum-seeker who has spent time in the West; or because the borders are, or may be, closed. As the applicant does not face a real chance of serious harm arising from any of his claims, it follows that I am not satisfied that he faces a real chance of serious harm when his claims are considered cumulatively.

Refugee: conclusion

54. 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

55. 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

56. 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.

57. I have found above that the applicant does not face a real chance of harm: from Hamas for any reason; because of his religion; arising from his medical condition; as a returned asylum-seeker who has spent time in the West; or because the borders are, or may be, closed. As 'real chance' and 'real risk' have been found to equate to the same threshold¹⁵ 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 the Palestinian Territories, the applicant will face a real risk of significant harm in Gaza.

Complementary protection: conclusion

58. 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).

¹⁵ MIAC v SZQRB (2013) 210 FCR 505.

Decision

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

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.