



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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PALESTINIAN TERRITORIES  
IAA reference: IAA21/09746

Date and time of decision: 1 October 2021 14:19:00  
C Wilson, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a stateless Sunni Arab from Gaza in the Palestinian Territories. He arrived in Australia as an unauthorised maritime arrival [in] April 2013. He applied for a Safe Haven Enterprise Visa (SHEV) on 21 September 2017.
2. A delegate of the Minister for Home Affairs (the delegate) refused the application on 23 August 2021. The delegate was unable to contact the applicant for an interview. The delegate found the written claims in his SHEV application did not provide a basis for finding the applicant faced a real chance of persecution or real risk of significant harm in the Palestinian Territory.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The applicant was not interviewed by the delegate. The delegate made attempts to invite the applicant to an interview in 2019, 2020 and 2021. The migration agent who assisted him to lodge the SHEV application confirmed he could not contact the applicant either. The Department's file indicates the delegate tried various avenues to locate the applicant but was unable to. As the delegate was unable to make contact, and the applicant failed to attend scheduled interviews, the delegate proceeded to make a decision on the information before them.
5. In these circumstances I have considered whether I should exercise my discretion to invite the applicant to an interview. Part 7AA of the Act provides for a limited form on review on the papers, and except in limited circumstances, I must conduct the review without interviewing the person. I may exercise a discretion under s.473DC to invite a person to give new information at an interview, or in writing, however there is no obligation to do so. I consider the delegate made reasonable attempts to contact the applicant. The IAA also has tried to contact the applicant by letter, email and telephone, but there has been no response from the applicant. There is no request from the applicant for an interview, or explanation why he cut off contact with the Department and his agent, or why he failed to update his contact details. In all the circumstances I have decided not to exercise my discretion under s.473DC(3) to invite him to an interview.
6. I have obtained new information in the form of the DFAT Thematic Report Palestinian Territories dated 15 March 2017. I am satisfied there are exceptional circumstances to justify considering new information in the unusual circumstance that the delegate did not refer to or include any country information in their decision.

### Applicant's claims for protection

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7. The applicant's claims can be summarised as follows:
  - He is an Arab Sunni Muslim from Khan Younis, Gaza Strip in the Palestinian Territory. He is single and has [number] brothers and [number] sisters.

- Life was hard in Gaza because the Hamas and Fateh regimes were fighting for control. Hamas made life difficult for people like him who did not agree with their strict laws.
- As a member of the [Name 1] family he is known to be against Hamas.
- His family had a fight with [a named] family, who are supporters of Hamas, in 2006. Two of his cousins were killed in the fighting, and at least 30 others died.
- In 2007 he was abused at college for talking to a female friend. When a fight broke out he was the one expelled from college because the people abusing him were Hamas supporters.
- His brother was detained after Hamas took control in 2007 because he had worked for the Palestine Preventive Security in Fatah. In 2013 his brother fled the country to go to [Country 1].
- A few days before he left Gaza he was stopped by two people on the street for wearing modern jeans. They started a fight with him and ripped his jeans off him. They were all taken to a Hamas office where he was detained overnight. The men who fought him were let go because they were Hamas supporters.
- He cannot return to Gaza because the borders are closed. Even if he could re-enter he will be persecuted by Hamas. His life will be in danger because there is constant shooting in Gaza between different groups and the Israeli government targets Gaza.

### **Refugee assessment**

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8. 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**

9. 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.

10. I accept the applicant is from the Palestinian Territory based on the identity documents he provided to the Department. The applicant claims he is stateless and I accept he is, as the Palestinian Territory is not a recognised state. The applicant also claims he is unable to return to Gaza in the Palestinian Territory because the border is closed. I note Israel controls exit and entry points to the Palestinian Territories and the applicant would require approval from the Israeli authorities to return.<sup>1</sup> It is mere speculation that such approval would be refused, but in any event his claims are to be assessed against the country of former habitual residence, regardless of whether it would be possible to return to that country. I find the Palestinian Territory is his place of birth and former habitual residence, and therefore it is his receiving country for the purpose of the review.
11. In his SHEV application the applicant has described incidents that made him want to leave Gaza and seek a better life. He did not provide any documentary evidence to support his claims nor make himself available for an interview to provide evidence and expand on his claims.
12. The applicant claims one of his brothers was detained in 2007 because he worked for Fatah. The applicant does not himself claim to be associated with or a supporter of Fatah. There is no claim or evidence he nor any other family members, including [number] other brothers, suffered harm or adverse attention from Hamas because of one brother's alleged detention for working for Fatah. On the limited information before me and the lack of information that the applicant or any other family members suffered harm because of one brother's work for Fatah, I find the applicant does not face a real chance of harm because his brother worked for Fatah or was detained by Hamas for this reason in 2007.
13. The applicant claims he left Gaza following an incident where he was humiliated in the street. He says he was approached by two men who ripped off his jeans because the jeans had a modern design. A fight ensued and they were all taken to a Hamas office. He was held for one night. If such an incident occurred, I accept it would have been humiliating to have had his jeans ripped off him in public. He does not claim to have been harmed by Hamas, apart from being held for the night, nor indicate he was of ongoing adverse interest for this incident. Whilst the incident may have led him to want to leave Gaza, on the information before me I find it was a one-off incident with no ongoing consequences. I find he does not face a real chance of harm from the people who stopped him in the street or the Hamas officers who detained him for 1 night.
14. The applicant claims his family is known to be against Hamas but has not explained why this is. He says his family were involved in a violent fight with [a named] family in 2006 and that he was nearly hit by bullets in this dispute. He says [the named] family are Hamas supporters, but hasn't explained what the fight was about. He claims at least 30 people were killed in the fighting, including 2 cousins. From the numbers claimed it appears he is speaking of his extended family or clan, rather than his own close family of parents and siblings. He does not claim he or his close family members were willing or active participants in the fighting. He has not provided any detail of harm suffered by him or his close family members or even his clan related to this fight post-2006, nor explained why he may have a real chance of harm now or in the reasonably foreseeable future for reason of this dispute in 2006. With the minimal information before me regarding this incident from 15 years ago I consider the chance of the applicant suffering any harm related to the fight is too remote to amount to a real chance.

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<sup>1</sup> DFAT, Thematic Report Palestinian Territories, 15 March 2017.

15. The few other incidents he refers to in his statement include an incident at college and the incident in the street. From the limited information he provided, neither appear to be examples of him being targeted because he was allegedly known to be against Hamas. He says he will be targeted by Hamas, but hasn't detailed why he would be of adverse interest to them. I find the few incidents he has raised do not indicate he is considered a target. I consider he is an ordinary young man in Gaza, without a profile, and I do not accept he faces a real chance of being targeted by Hamas because of his family, or because he does not support them, or for any other reason.
16. The applicant claims to fear harm from general violence in Gaza and from attacks from Israel. He has not identified why he may be targeted in such violence. Apart from the fight in 2006, there is no information he or his family have been targeted or harmed in generalised violence or attacks from Israel. I consider the chance of him being caught up in generalised violence in Gaza, including possible attacks from Israel, is speculative and is too remote to amount to a real chance.
17. I am not satisfied on the limited information before me that the applicant has a well-founded fear of persecution

#### **Refugee: conclusion**

18. 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**

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19. 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**

20. 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.
21. 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.
22. I have found the applicant does not face a real chance of harm for reason of his family, for not supporting Hamas, any incidents that may have happened to him when he lived in Gaza, or generalised violence. 'Real chance' and 'real risk' has been found to equate to the same

threshold. For the same reasons given above I find the applicant does not face a real risk of significant harm for any of the reasons claimed.

**Complementary protection: conclusion**

23. 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**

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

## Applicable law

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### **Migration Act 1958**

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

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**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.