Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11313/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
on 21 February 2019	**On 14 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SUTHERLAND WILLIAMS

Between

MR ABDUL AZIZ NADER

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Jones, Home Office Presenting Officer
For the Respondent: Ms J Bond, Counsel, instructed by Freemans Solicitors

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Stedman ('the judge'), promulgated on 31 October 2018, dismissing the appellant's appeal against the respondent's decision to refuse the appellant's asylum, humanitarian protection and human rights claims.

Overview

2. The appellant is a Palestinian national (Occupied Palestinian Territories). He was born in 1998. On 17 March 2018 he applied for asylum and humanitarian

protection in the United Kingdom on the grounds of imputed political opinion and nationality. That application was refused by the respondent on 13 September 2018.

3. The appellant appealed the respondent's decision under section 82(1)(a) and (b) of the Nationality, Immigration and Asylum Act 2002; namely, that he was a refugee whose removal from the United Kingdom would breach the United Kingdom's obligations under the 1951 Geneva Convention relating to the status of refugees ('the Refugee Convention'); and further that his removal would breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection under Council Directive 2004/83/EC (the qualification directive); and that his removal would breach the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms.

4. The appeal was listed before the First-tier Tribunal on 23 October 2018; and thereafter dismissed by Judge Stedman.

5. The judge's decision provides the following factual findings:

    i. The appellant was born and has lived virtually all of his life in Saudi Arabia, where his parents and siblings continue to live and work.

    ii. The appellant moved to Lebanon on 11 September 2016 and studied there for nearly a year.

    iii. He lived in student accommodation, but on weekends would stay with his grandmother within the United Nations Relief and Works Agency for Palestine Refugees in the Near East ('UNRWA') Al-Rashidiya Refugee Camp.

    iv. The appellant was not habitually resident in the occupied territories or in one of its neighbouring states.

    v. The appellant had not experienced any problems in Saudi Arabia until he returned there from Lebanon on 14 August 2017.

    vi. Upon return, he was interrogated by the Saudi Arabian authorities twice and on the second occasion, on 26 November 2017, he was detained for 4 days and badly mistreated.

    vii. His residency was revoked and he was deported back to Lebanon.

    viii. The appellant then resided at the UNRWA Al-Rashidiya Refugee Camp for a period of 2 months with his grandmother prior to embarking on his journey to the UK.

    ix. He travelled to the UK on his own Lebanese travel document.

    x. The appellant has 3 uncles and some cousins in the UK.

6. I do not understand the above facts to be contested by either party in the appeal before me, (indeed, they reflect the summary set out by the appellant's counsel in the grounds of appeal application).

7. Importantly for these purposes, the respondent accepted that the appellant could not be returned to Saudi Arabia, where his residency had been revoked and where he had been detained and ill-treated by the authorities.

8. The central issue in the appeal at first instance was whether the appellant could be returned to Lebanon and the UNRWA Al-Rashidya Refugee Camp without breaching any of his protected rights (*per* paragraph 10 of the judge's determination).

9. On 21 January 2019, Upper Tribunal Judge Grubb gave permission to appeal on receipt of the following grounds:

   Ground 1 – the judge had erred as the appellant is a refugee from Saudi Arabia, who should not be expected to relocate to Lebanon, as Lebanon is not a signatory to the Refugee Convention;

   Ground 2 - the judge had erred in finding that Article 1D of the Refugee Convention applied, as the appellant was not habitually resident in Lebanon;

   Ground 3 – the judge had erred in finding that there were not 'very significant obstacles to integration' under paragraph 276 ADE(vi) of the Immigration Rules.

10. It is against the above background that this matter was listed before me.

Ground 1 – the judge had erred as the appellant is a refugee from Saudi Arabia, who should not be expected to relocate to Lebanon, as Lebanon is not a signatory to the 1951 Refugee Convention

11. This first ground of appeal is partly founded on what appears to have been a mistaken concession made by counsel for the appellant at the First-tier Tribunal stage. Counsel now (correctly) accepts that Lebanon is not a signatory to the Refugee Convention; and she was in error in previously suggesting it was. It is advanced that this error was potentially capable of materially affecting the outcome of the appeal, as Lebanon could not be a first safe country of asylum for this appellant and that Lebanon generally is not a reasonable alternative for the appellant.

12. It is necessary to take this ground of appeal in two stages: first, is the appellant correctly characterised as a refugee falling under the Refugee Convention? Secondly, should he be expected to relocate to a country that has not signed the Refugee Convention?

13. Article 1D of the Refugee Convention states as follows:

> "This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.
>
> When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the

relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention."

14. This assists in answering the first question: is the appellant correctly characterised as a refugee falling under the Refugee Convention? If an individual is receiving protection or assistance from a UN agency, then *per* Article 1D, the Refugee Convention has no application. UNRWA is one such agency.

15. In the instant matter, it was not accepted by the respondent that assistance offered by UNRWA had ceased to be available. As a result, the respondent found that the appellant was not eligible for refugee status.

16. The judge makes a clear finding that the appellant was a documented refugee in Lebanon with UNRWA, and a registered refugee with both UNRWA and the Lebanese authorities. The judge also found that the appellant had not shown that the protection offered by UNRWA had ceased to be available.

17. It is not the role of this Upper Tribunal to unpick the findings of fact made in the tribunal below. That was not the basis upon which permission to appeal was granted. However, for completeness, and because this issue is central to this appeal, I should add that it is apparent from the bundles I was provided that the appellant completed a one-year course in care and body management organised by UNRWA and received his diploma on 31 July 2017, (the appellant explained in interview that this was a form of physiotherapy course). There is a further certificate that appears to have been issued under the auspices of the Innovation Labs Network, bearing logos for UNICEF, UNRWA, and the Kingdom of the Netherlands. Furthermore, within the bundle is a document from the General Directorate for the Political Affairs and Refugees of the Republic of Lebanon, showing the appellant as being resident at the Al Rachidieh Camp, where his grandmother also lives. Further, there is a special ID card for Palestinian refugees issued by the Lebanese authorities confirming that the appellant was a Palestinian residing in Lebanon on 16 September 2016; there is also a family record issued by UNRWA for the Nader family, printed on 15 May 2017 (contained on that document are the details of this appellant). In addition, the appellant was previously in possession of a Lebanese/Palestinian travel document. There is also information within the bundle to confirm that the Al Rashidiya camp was built by UNRWA and continues to have services provided by it (save for the administration or policing of the camps, which is the responsibility of the host nation).

18. The reason I have set out the above is to place into context the judge's finding that the appellant had been under the protection of UNRWA and was a recognised refugee by them. It appears to me to be a finding the judge, on balance, was entitled to make for the reasons he gives. While the appellant's representative submits that the fact he bore documentation issued by UNRWA

is not sufficient to trigger the operation of the exclusion clause under Article 1D, I remind myself that the appellant also bears an evidential burden in this regard. Other than his counsel's repeated assertion that he was not under UNRWA protection and what can be drawn from the appellant's statement, the evidence on one view points in the other direction. I do bear in mind that demonstrating the opposite may have been difficult, but the appellant has done little to explain the documents, what efforts he took at the First-tier stage to clarify the position or why he says protection and assistance did not follow.

19. The above is central to the understanding of this case, because as the judge correctly observes, Article 1D has the effect of excluding from the Refugee Convention those Palestinians who are receiving UNRWA protection (as set out in the Country Policy Information Note, cited by the judge at paragraph 18 of his determination). That being so, the Refugee Convention has no application and the submissions in relation to internal relocation also have no proper application.

20. Even if the judge had been wrong about that, the notion that he could not be returned to the Lebanon because he was a refugee from Saudi Arabia and not Lebanon (the second question), overlooks the nature of the Convention itself, which precludes expulsion or return to a territory where the appellant's life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion – Article 33.

21. While it is correct to observe that Lebanon is not a party to the Refugee Convention or its 1967 Protocol; it is not the destination in terms of the country of return that concerns the tribunal, but the risks and protection or assistance the individual would receive upon return, viewed through the lens of the UK's international obligations and the protections available.

22. In the instant matter, the decision discloses cogent, evidence-based reasons for concluding that the appellant would not be at risk on return to Lebanon and that there was therefore no breach of Article 15C of Council Directive 2011/95/EU (the recast Qualification Directive, "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict"), or of his Article 8 human rights.

23. As a result, I dismiss this ground of appeal.

Ground 2 - the judge has erred in finding that Article 1D applied, as the appellant was not habitually resident in Lebanon

24. It appears that there may be a typographical error in this ground of appeal. The appellant was arguing that the judge made a material error of law in finding that the appellant was *excluded* from the protection of the Refugee Convention under Article 1D.

25. This ground overlaps with Ground 1, and to an extent repeats the arguments in relation to the applicability of the Refugee Convention, which I have dealt with above.

26. In Ground 2, the appellant's counsel submits that because the appellant was not habitually resident in Lebanon, but instead originated from Saudi Arabia, it was indisputable that while in Saudi Arabia he did not receive protection or assistance from UNRWA.

27. This submission overlooks the judge's finding that the appellant is a Palestinian refugee recognised and protected in Lebanon by UNRWA. The appellant had not been living in Saudi Arabia prior to his departure (via South America and Europe) to the United Kingdom. He had been living for two months in Lebanon in a refugee camp with UNRWA services.

28. I am satisfied that the judge was entitled to take the view he did that the fact the appellant was not previously habitually resident in Lebanon had no significant bearing on the approach he should take to his return there, save only by reference to consideration of his Article 8 European Convention on Human Rights ('ECHR').

29. Part of the further difficulty I suspect the judge at first-instance faced is that Counsel has provided no authority for her proposition that habitual residence is central to the operation of Article 1D. Indeed, much of what is stated in these grounds of appeal do not carry any case law authority other than the assertions of the representative and a hypothesis of what the law should be.

30. The United Nations High Commissioner for Refugees Note on the UNHC's interpretation of Article 1D of the 1951 Convention relating to the Status of Refugees in article 12(1)(a) of the EU Qualification Direction in the context of Palestinian Refugees seeking international protection, dated 9 May 2013, (handed to me during the course of the hearing) sets the above into context. It confirms that UNRWA provides assistance to some 5 million registered Palestinian refugees in places, including the Lebanon. Part of the purpose is to ensure the continuity of protection and assistance for Palestinian refugees in circumstances where that protection ceases as a result of Article 1D. It is the UNHCR's view that those who are eligible as well as actually receiving protection are considered to be receiving protection or assistance from the UNRWA. I do not need to resolve that point, but I simply observe that the appellant on one view would be caught either way.

31. The asylum policy instructions on Article 1D (paragraph 17 of the determination) suggest that UNRWA continues to provide protection and assistance to Palestinian refugees in the occupied territories and in neighbouring countries within its mandate. The interpretation the judge gives does not lead to the denial of protection for the appellant, it simply places the

appellant in the same position as many other Palestinians who fall under the protection of UNRWA.

32. The issue is whether or not returning the appellant would breach the U.K.'s international obligations. The Refugee Convention does not apply to individuals in circumstances where the protection of another state is unnecessary. The appellant is a Palestinian national. He is not a national of Saudi Arabia. He may have been resident there for most of his life, but his status in that country was to a degree perilous – as demonstrated by events.

33. In the instant matter, there is no evidence the appellant would suffer deprivation of human rights that were fundamental to him if he was returned to Lebanon or the UNRWA camp. While the appellant may not be able to avail himself of protection in Saudi Arabia, he can have the protection of UNRWA in Lebanon, and indeed has done so previously.

34. Article 1D of the Refugee Convention provides that refugees who are in receipt of assistance under the UN are outside the terms of the Convention until such assistance ceases. Simply electing to depart a territory where an individual has UNWRA protection (or the opportunity of UNRWA protection) cannot be sufficient to advance that the Article 1D exclusion does not apply, unless there is something more (for example, if the appellant had left for reasons relating to his personal safety or because of circumstances beyond his control. I do not see that as applying here: '*The appellant did not give evidence of experiencing any specific problems or protection needs*').

35. There is no evidence to suggest that the authorities in Lebanon would refuse his admission or refuse the renewal of his travel documents. The appellant voluntarily left an area under the control or assistance of UNRWA. There is no evidence to suggest that he was prevented from leaving. There is no evidence that he would be prevented from returning.

36. I therefore dismiss this ground of appeal.

Ground 3 – the judge has erred in finding that there were not 'very significant obstacles to integration' under paragraph 276 ADE(vi) of the Immigration Rules.

37. Counsel for the appellant appeared to accept that the appellant did not have a well-founded fear of persecution in Lebanon and that it had never been his case that he had a well-founded fear of persecution in Lebanon. His case was that he had a well-founded fear of persecution in Saudi Arabia and that the judge had erred by not considering more fully the Saudi position.

38. This was a different approach to the one that the representative had taken in her grounds of appeal, where it was submitted the judge had erred as he had failed to apply the correct test of whether the appellant was enough of an insider in Lebanon to be able to build up a variety of human relationships to

give substance to his private or family life, citing *Kamara v Secretary of State for the Home Department* 2016 EWCA Civ 813:

> '14. … The idea of 'integration' calls for a broad evaluative judgement to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life'.

39. The concept of integration is broad and largely factual, and therefore needs to be looked at through the circumstances of this particular case. That is what the judge did. The judge held that the appellant was able to leave his home and family and go to Lebanon and study for one year, living in student accommodation. He had chosen to embark on this path because he was able to study for free in Lebanon. The judge referenced that at weekends the appellant chose to go to the UNRWA Al Rashidiya camp to be with his grandmother. The judge found that the appellant did not experience any particular difficulties there during that time (something his counsel conceded before me) and although it was only on a temporary basis, he was nevertheless going there quite frequently to stay over.

40. While it was submitted that the judge failed to consider the test of significant obstacles under paragraph 276 ADE, that the appellant was not an 'insider', and failed to consider the appellant's history in Lebanon or the fact that he was not habitually resident there, in my finding the judge has adequately considered those aspects of the evidence at paragraph 30 – 33 and through reading his judgement as a whole.

41. The judge accepted that returning there on a permanent basis would give rise to a completely different reality and have its own challenges:

> '… But his experience of life there during his studies, even if of short duration in the scheme of his whole life, as well as the presence of his grandmother there, and in the context of having no history of any specific problems, means that he will not face significant obstacles to his integration there.'

42. The judge correctly observes that the appellant is no stranger to Lebanon, having lived there before, and was able to participate and be accepted there after a short period of time. His representative's suggestion that he would not be enough of an insider is in my view misplaced. He has lived in the Lebanon, he has adapted to life there, he has studied there. It seems to me that the judge has said as much as he needs to in that regard, particularly bearing in mind counsel's concession about the appellant's life in Lebanon.

43. I am more than satisfied that the judge has carried out the broad evaluative judgement as envisaged in *Kamara.*

44. There is in my judgement nothing in the point about returning to Saudi Arabia and having a well-founded fear in that country. There was never any question of him being returned to Saudi Arabia.

45. In terms of the appellant's Article 8 ECHR rights and in terms of his rights outside of Article 8, the judge adequately considered the issue of whether he can return to Lebanon/the UNRWA camp. He has found that he would be able to do so, and it is not the role of this Upper Tribunal to go behind that determination unless a material error of law has occurred. I find no such error in this case. This ground amounts to mere disagreement with the judge's conclusions on the evidence.

Notice of Decision

The appeal is dismissed.

No application was made for anonymity in this appeal. The general rule is that hearings are held in public and judicial decisions are published (*A v BBC* [2014] UKSC 25) and I saw no reason to depart from the general rule in this case. Neither representative invited me to take a different course.

Signed 

Date 11 March 2019

Deputy Upper Tribunal Judge Sutherland Williams