Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09415/2018

THE IMMIGRATION ACTS

Heard at George House, Edinburgh	**Decision & Reasons Promulgated**
On 21 July 2021	**On 24 January 2022**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

A K O
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Caskie, instructed by SJK Solicitors
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the decision of the Secretary of State made on 18 July 2018 to refuse his protection claim. His appeal against that decision was dismissed by the First-tier Tribunal for the reasons set out in a decision promulgated on 5 September 2018. That decision was in turn set aside by Upper Tribunal Judge Finch for the reasons set out in her decision of 5 June 2020.

The Appellant's Case

2. The appellant was born in Gaza in the Palestinian Occupied Territories in 1974. He is stateless. His case, initially, was that he was at risk from Hamas in Gaza, and cannot return there; he also states he cannot go elsewhere in the Occupied Territories or to Israel. He has tried to obtain documentation from the Palestinian authorities but has been unable to do so. He has at times been destitute in the United Kingdom, and has sought voluntary return but has been unable to do so.

3. The appellant arrived and claimed asylum in the United Kingdom in December 2007, having spent some time in France. His application was refused and by 24 February 2009 he had become appeal rights exhausted.

4. On 22 June 2017 the appellant made further submissions to the Secretary of State This was the last in a series of further applications as set out in the appellant's immigration history in the refusal letter at paragraphs [10]to [18]. On this occasion, she treated the submissions as a fresh claim, but refused it giving rise to this appeal.

The Respondent's Case

5. The Secretary of State had regard to the previous determination in this case (AA/10278/2008) in which his credibility was doubted, the judge noting that the appellant's problems in the Palestinian National Authority related only to one part, Gaza, it would be reasonable to expect him to relocate. His account of being persecuted by Hamas was not accepted.

6. Despite the further submissions, the Secretary of State did not accept the appellant was at risk of persecution from Hamas nor was she satisfied that his return to Palestine would be in breach of Article 15(c) of the Qualification Directive. Although accepting that he did not have a travel document, it was considered he could relocate within the Palestine National Authority and would be able to obtain a passport. It was considered also that as the appellant had sought a voluntary return in 2009, 2010 and 2015 and he had failed to provide evidence as to why he could not return again now, the Secretary of State noting the appellant had not demonstrated why he could not access documentation to facilitate voluntary return. It was not considered either that removal would be in breach of the United Kingdom's obligations pursuant to Articles 2 or 3 or 8 of the Human Rights Convention.

The Hearing

Scope of the hearing

7. In her decision of 3 June 2020, Upper Tribunal Judge Finch set aside the First-tier Tribunal's decision, directing that it was to be remade de novo. On that basis, I have approached the remaking of the decision on the basis that none of the findings of fact made by Judge Agnew are retained.

8. In reaching my decision I have taken into account the submissions made at the hearing and subsequently in writing, as well as the following:-
   (i) Appellant's bundle one
   (ii) Appellant's bundle two.
   (iii) Letter plus three attachments (expert report from Dr Hafidh, his CV, a letter from the Palestinian representative in the United Kingdom).
   (iv) CPIN: Background Information, Including Actors of Protection and Internal Relocation OBT December 2018.
   (v) CPIN Security and Humanitarian Situation, OBT (Gaza) March 2019.
   (vi) Home Office Fact-Finding Mission Report, Freedom of Movement Security and Human Rights Situation OBT March 2020.

9. The appellant was not called to give evidence. Mr Caskie submitted that the appellant is a refugee within the terms of Article 1D of the Refugee Convention as he is outwith the territory where UNRWA is active and cannot return. He submitted that being stateless Palestinian outside the operation of UNRWA was sufficient to make him a refugee. He submitted also in line with the expert evidence that there was no practical means of return, and that it was unlikely he would be able to go anywhere or legalise his position in Gaza. He would therefore be residing illegally on return. He submitted that the appellant would not be able to get into Egypt without relevant documentation and thus there was no mechanism of him getting from Egypt to Gaza. He submitted that the protection of the appellant by UNRWA had ceased.

10. In response, Mr Diwnycz said he had little to add, observing it was probably likely that the appellant is an Article 1D refugee but he did not concede that matter.

11. I indicated that I would be giving directions for further written submissions to be served once I had had the opportunity to review the jurisprudence relevant to Article 1D which had not been provided. Having done so, I issued directions and have taken the subsequent further submissions from the appellant into account. Despite being given additional time, the respondent has not provided any submissions in reply.

The Law

12. The appellant's case turns on the interpretation of Article 1D of the Refugee Convention as set out in the Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection ("the Qualification Directive"). In the light of the United Kingdom's withdrawal from the EU, consideration must be given to the extent that the Directive and the case law of the Court of Justice of the European Union ("CJEU") is still binding.

13. Article 1D provides:

D 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. The Qualification Directive provides at Article 12 as follows: -

Article 12

Exclusion

1. A third country national or a stateless person is excluded from being a refugee, if:

(a) he or she falls within the scope of Article 1 D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the Nations, these persons shall ipso facto be entitled to the benefits of this Directive;"

15. Following Ainte (material deprivation - Art 3 - AM (Zimbabwe)) [2021] UKUT 203 (IAC), I am satisfied that the Qualification Directive is still in force by operation of section 2 to 4 of the European Union Withdrawal Act 2018 ("EUWA 2018"). The reasoning in Ainte is strengthened by the fact that it is seen necessary to repeal the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (SI 2006/2525) by clause 29 (4) of the Nationality and Borders Bill 2021-22 (HC Bill 187).

16. I am satisfied also that the Qualification Directive has direct effect – see Al-Khatib v SSHD [2016] CSIH 85 at [26]:

> The Qualification Directive is a measure of European Union law having direct effect and therefore capable of imposing obligations on the relevant authorities in Member States from a date no later than 10 October 2006 when, in terms of Article 38 of the directive, Member States were required to bring into force provisions necessary to comply with its terms. As was explained by Lord Hope at para 45 of *R (on the application of ST (Eritrea))*, it was designed to give effect to the Tampere Conclusions which provided that there should be a Common European Asylum System, based on a full and inclusive application of the Geneva Refugee Convention as supplemented by the New York Protocol. The Council's power to adopt the directive is derived from Article 63 of the consolidated Treaty establishing the European Community. The directive is a free-standing provision and capable of imposing obligations on member states of the European Union in respect of persons seeking international protection which are more extensive than the obligations which these states may have undertaken by their accession to other international instruments. The appellant says that that is exactly the effect of the directive, and he draws support from what Lord Hope said in

para 45 of *R (on the application of ST (Eritrea))*: "[The Qualification Directive] goes further in some respects than the Refugee Convention because, for example, it requires a residence permit to be issued as soon as possible where an applicant qualifies as a refugee: Article 24(2)".

17. Whether, and to what extent the case law of the CJEU is retained is not addressed in Ainte and requires a consideration of section 6 of EUWA 2018 which, so far as is relevant provides:

6 Interpretation of retained EU law

(1) A court or tribunal—

(a) is not bound by any principles laid down, or any decisions made, on or after IP completion day by the European Court, and

(b) cannot refer any matter to the European Court on or after IP completion day .

(2) Subject to this and subsections (3) to (6), a court or tribunal may have regard to anything done on or after IP completion day by the European Court, another EU entity or the EU so far as it is relevant to any matter before the court or tribunal.

(3) Any question as to the validity, meaning or effect of any retained EU law is to be decided, so far as that law is unmodified on or after IP completion day and so far as they are relevant to it—

(a) in accordance with any retained case law and any retained general principles of EU law, and

(b) having regard (among other things) to the limits, immediately before IP completion day , of EU competences.

(4) But—

…

(ba) a relevant court or relevant tribunal is not bound by any retained EU case law so far as is provided for by regulations under subsection (5A)[1], and

(c) no court or tribunal is bound by any retained domestic case law that it would not otherwise be bound by.

…

(5A) A Minister of the Crown may by regulations provide for—

…

(6) Subsection (3) does not prevent the validity, meaning or effect of any retained EU law which has been modified on or after IP completion day from being decided as provided for in that subsection if doing so is consistent with the intention of the modifications.

…

(7) In this Act—

"*retained case law*" means—

(a) retained domestic case law, and

(b) retained EU case law;

"*retained domestic case law*" means any principles laid down by, and any decisions of, a court or tribunal in the United Kingdom, as they have effect immediately before [IP completion day and so far as they—

(a) relate to anything to which section 2, 3 or 4 applies, and

[1] No such regulations apply to this appeal

(b) are not excluded by section 5 or Schedule 1, (as those principles and decisions are modified by or under this Act or by other domestic law from time to time);

"*retained EU case law*" means any principles laid down by, and any decisions of, the European Court, as they have effect in EU law immediately before [IP completion day][1] and so far as they—
(a) relate to anything to which section 2, 3 or 4 applies, and
(b) are not excluded by section 5 or Schedule 1, (as those principles and decisions are modified by or under this Act or by other domestic law from time to time);
"*retained EU law*" means anything which, on or after IP completion day , continues to be, or forms part of, domestic law by virtue of section 2, 3 or 4 or subsection (3) or (6) above (as that body of law is added to or otherwise modified by or under this Act or by other domestic law from time to time);
"*retained general principles of EU law" means* the general principles of EU law, as they have effect in EU law immediately before IP completion day and so far as they—
(a) relate to anything to which section 2, 3 or 4 applies, and
(b) are not excluded by section 5 or Schedule 1,
(as those principles are modified by or under this Act or by other domestic law from time to time)

18. I am satisfied in the light of Ainte and Al-Khatib that the Qualification Directive is retained EU law as defined; it has not as yet been modified nor has it ceased to form part of domestic law. Further, I am satisfied those decisions made either by the CJEU or the domestic courts in respect of the Qualification Directive continue to have force as either retained EU Case Law or retained domestic case law respectively so long as those decisions were made prior to 31 December 2020 – see section 6(1)(a) EUWA 2018.

19. How Article 1D is to be interpreted has given rise to a number of decisions, both from the CJEU and the Court of Appeal. These focus on:

(i) to whom does Article 1D apply;
(ii) in what circumstances does Article 1D cease to apply; and,
(iii) if Article 1D ceases to apply, what are the consequences to those to whom it did apply?

20. The start point is the decision of Laws LJ in El-Ali v SSHD [2002] EWCA Civ 1103. Having set out the historical background at [9] to [17], he then turned to possible interpretations of Article 1D at [23] ff.

> 23. I turn then to the language of the Article. It contains three particular phrases upon which the debate has focussed. Plainly the Article must be read as a whole (and, of course, in the context of the surrounding provisions of the Convention), but the combined effect, correctly understood, of these three elements will drive its overall meaning. For convenience I will set out the text of the Article again with the three phrases emphasised:
>
> > "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***."
>
> [emphasis added]

21. Laws LJ concluded [24] that "at present" confined the application of Article 1D to those Palestinians who as at 28 July 1951, when the Convention was adopted, were registered to receive protection or assistance from non-UNHCR United Nations bodies and were resident in the territories where such bodies operated, rejecting the alternative submission that it included any Palestinian who is receiving UNRWA assistance at the time when the application of Article 1D falls to be considered in any individual case;

22. Laws LJ concluded further at [25] that the cessation of support referred to in the phrase "such protection or assistance has ceased for any reason" required a single overall event, namely the cessation or withdrawal of its agencies' support by the United Nations; as for example might have happened if it had become clear that the Palestinians could return in peace and security to their homelands, and in consequence the operations of UNRWA were wound up.

23. Laws LJ also concluded [26] that the proper interpretation of "these persons shall ipso facto be entitled to the benefits of this Convention" meant that any Palestinian who came within Article 1D shall be accepted as a refugee without having to demonstrate that he falls within Article 1A(2) if he demonstrates that protection from UNRWA which he had previously enjoyed, had ceased. Given his conclusion that such a cessation of support would, in effect, only arise if UNRWA were wound up, no one could as yet meet that requirement.

24. In Bolbol [2010] EUECJ C-31/09 the Court of Justice took a different approach to the interpretation Article 1 D, holding:

> 47 Contrary to the line of argument developed by the United Kingdom Government, it cannot be maintained, as an argument against including persons displaced following the 1967 hostilities within the scope of Article 1D of the Geneva Convention, that only those Palestinians who became refugees as a result of the 1948 conflict who were receiving protection or assistance from UNRWA at the time when the original version of the Geneva Convention was concluded in 1951 are covered by Article 1D of that convention, and therefore, by Article 12(1)(a) of the Directive.
>
> 48 The Geneva Convention, in its original 1951 version, was amended by the Protocol on the Status of Refugees of 31 January 1967 specifically to allow the interpretation of that convention to adapt and to allow account to be

taken of new categories of refugees, other than those who became refugees as a result of 'events occurring before 1 January 1951'.

49 Therefore, in order to determine whether a person such as Ms Bolbol comes within a situation envisaged by the first sentence of Article 12(1)(a) of the Directive, it must be ascertained, as the referring court asks, whether it suffices that such a person is eligible to receive the assistance provided by UNRWA or whether it must be established that he has availed himself of that assistance.

25. As noted in Said (Article 1D: interpretation) [2012] UKUT 00413(IAC), what the CJEU held at [47] is an express rejection of the position taken by the Court of Appeal in El-Ali. The judicial headnote in Said provides:

1. Because of the wording of the Qualification Directive, Community law looks outside itself for the interpretation of article 1D, and the CJEU's pronouncement on the meaning of this aspect of refugee law is a pronouncement on the autonomous meaning of article 1D.

2. Following the CJEU's reversal of the operative part of the decision of the Court of Appeal in El-Ali [2002] EWCA Civ 1103, the other elements of the latter decision may need to be reconsidered, possibly along the lines set out by the Advocate General in Bolbol v Bevándorlási és Állampolgársági Hivatal Case C-31/09.

26. The CJEU next considered the meaning of Article 1 D in El Kott v Bevándorlási és Állampolgársági Hivatal [2012] EUECJ C-364/11. On this occasion, the court considered what was meant by UNRWA ceasing to provide protection or assistance. The CJEU rejected [56] the submission that it was only the abolition of UNRWA which brings about the cessation of the protection or assistance provided, concluding

57. Indeed, it is apparent from the words "[w]hen such protection or assistance has ceased" which introduces the second sentence of Article 12(1)(a) of Directive 2004/83 that *it is primarily the actual assistance provided by UNRWA and not the existence of that agency itself which must cease in order for the ground for exclusion from refugee status no longer to be applicable* [emphasis added].

The CJEU also held that:

59. Mere absence from such an area or a voluntary decision to leave [an area of UNRWA support] cannot be regarded as cessation of assistance ...if the person concerned has been forced to leave for reasons unconnected with that person's will, such a situation may lead to a finding that the assistance from which that person benefited has ceased within the meaning of the second sentence of Article 12(1)(a) of Directive 2004/83.

…

63 … a Palestinian refugee must be regarded as having been forced to leave UNRWA's area of operations if his personal safety is at serious risk and if it is impossible for that agency to guarantee that his living conditions in that area will be commensurate with the mission entrusted to that agency.

27. In summary, the CJEU's decision reversed the position taken in El-Ali that cessation was a one-off event (see [22] above) but also made it clear that [65] in order to decide whether support and protection by UNRWA has ceased requires an assessment of the application on an individual basis to determine whether that person was forced to leave the area of UNRWA's operations because his personal safety was at serious risk and it was impossible for UNRWA to guarantee that his living conditions in that area would be commensurate with the mission entrusted to UNRWA

28. The CJEU returned to Article 1D in Bundesrepublik Deutschland v XT [2021] EUECJ C-507/19. By that point Directive 2003/83 had been replaced by Directive 2011/95/EU to which the United Kingdom was not a party. There is, however, no material difference between Article 12 in Directive 2003/83 and its successor, Article 12(1)(a) in Directive 2011/95; the wording is identical as the CJEU noted in XT.

29. XT was decided on 13 January 2021, and thus is not binding on me as it was decided after 31 December 2020 – see section 6(1)(a) of EUWA 2018; and, strictly, it relates to a provision which never bound the United Kingdom. It, is, however, an interpretation of an identically worded provision which previously bound the United Kingdom, that is, the Qualification Directive. The decision is, thus, by operation of section 6 (2) of EUWA 2018 a case which I can take into account. Neither party made submissions as to whether I should do so.

30. In deciding whether I should take XT into account, it is relevant in my view to consider:

    (i) Does it apply general principles of EU law?

    (ii) Does it conflict with existing domestic case law?

    (iii) Given that it relates to the autonomous meaning of a provision of the Refugee Convention, does it conflict with it or decisions of other courts outside the United Kingdom on this issue?

31. Answering these questions requires first an analysis of XT.

32. In XT, the CJEU concluded:

> 80 In the light of the foregoing, the answer to the third question is that the second sentence of Article 12(1)(a) of Directive 2011/95 must be interpreted as meaning that UNRWA's protection or assistance cannot be regarded as having ceased where a stateless person of Palestinian origin left the UNRWA area of operations from a field in that area in which his or her personal safety was at serious risk and in which UNRWA was not in a position to provide that individual with protection or assistance, first, if that individual voluntarily travelled to that field from another field in that area in which his or her personal safety was not at serious risk and in which that person could receive protection or assistance from UNRWA and, secondly, if he or she could not reasonably expect, on the basis of the specific information available to him or her, to receive protection or assistance from UNRWA in the field to which

> he or she travelled or to be able to return at short notice to the field from which he or she came, which is for the national court to verify.

33. This, in effect, means that a Palestinian cannot claim that protection for him has ceased for the purposes of Article 1D if he moved from an area where he was protected and supported to an area where he could not, if he could get protection or assistance if at short notice he could return to the area where he had been protected or assisted.

34. This is an application of the already established principle that a Palestinian cannot simply through his own volition cease to be in support from UNRWA and thus a refugee. The issue of cessation coming about as a result of a Palestinian's own will was not issue in El -Ali but the conclusion that the cessation of support is a one-off event arising from actions of the UN (see [22] above) excludes the possibility of support ceasing by an act on the part of an individual Palestinian. On that basis there is no conflict between XT and domestic law.

35. Further, while XT is not an application of general EU law principles in the sense of principles relating to fundamental rights, proportionality, legal certainty, or non-discrimination, it is in effect, an application of the internal relocation principle set out in Article 8 of the Qualification Directive: an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country. That position is more clearly stated in the opinion of Advocate-General Tanchev at [36] to [46] which forms the basis of the CJEU's decision at [36]ff.

36. My attention has not been drawn to any other decision on Article 1D either from domestic courts, or outside the United Kingdom which conflicts with XT.

37. In the circumstances, I am persuaded that the outcome of the decision is correct, and that the reasoning in XT should be adopted. That said, for the reasons set out below, the issue is not material on the facts of this appeal.

38. To summarise. In Bolbol and El Kott the CJEU took a different view from the Court of Appeal in El-Ali as to the class of people to whom Article 1D applies and when ceases to apply. But, for the reasons set out above at [16], El Kott is binding. The decision in XT is not binding but, for the reasons set out above, I am satisfied that it ought to be followed.

39. The combined effect of the CJEU's decisions on Article 1D is that a stateless Palestinian is entitled to be recognised as a refugee under Article 1A1 of the Refugee Convention (so long as not otherwise excluded) if:

    (i) He previously received UNRWA assistance; and

    (ii) He ceased to receive UNRWA assistance because:

(a) his personal safety was at serious risk in the area where he lived such that it is impossible for UNRWA to guarantee his individual living conditions which would be compatible with its mission; or

(b) was forced to leave the UNRWA area where they lived of operations owing to circumstances beyond his control; but

(c) only if he had moved to the UNRWA area in question and could not easily return to an UNRWA area where he had been safe and to which he could shortly return.

40. Accordingly, in determining if an individual is, by operation of Article 1D, entitled to be recognised as a refugee following factual questions must be asked:

(i) is the appellant a Palestinian eligible to receive UNRWA protection or assistance? If so,

(ii) has the appellant previously received UNRWA assistance? if so

(iii) did the appellant cease to receive UNRWA assistance because his personal safety was at serious risk such that it is impossible for UNRWA to guarantee the living conditions of that individual which would be compatible with its mission? and

(iv) is he or has he been forced to leave UNRWA area of operations owing to circumstances beyond his control?

41. Only if all of these points are answered in the appellant's favour is he automatically entitled to be recognised as a refugee under Article 1 A 1. If points (i) and (ii) are answered in the appellant's favour but he does not meet (iii) and (iv), then he is excluded from recognition as he is a person to whom Article 1D applies. If either points (i) or (ii) are not answered in the affirmative, then Article 1D does not apply.

This appellant

42. Applying these principles to this appeal:

(i) Is the appellant a Palestinian eligible to receive UNRWA assistance?

(ii) has he previously received assistance provided by UNRWA?

43. These questions can be taken together.

44. In his written submissions Mr Caskie stated at [3]: the CJEU's other principal finding was that only those who had actually availed themselves of UNRWA assistance could come within the exclusion clause but that is not relevant to the present case unless and until the appellant establishes he was previously receiving UNRWA assistance. Something he is urgently attempting to clarify.

45. At [6] Mr Caskie submitted:

> The CJEU ruling also found that while registration with UNRWA would be sufficient proof of having received assistance, such assistance could be provided in the absence of registration, in which case the appellant must be permitted to provide evidence of that assistance by other means. The appellant has not fully availed himself of such opportunities he has had, and the Secretary of State has not apparently contacted UNRWA as her API says he should.

46. It is accepted that the appellant was born in Gaza in 1974. The question is then whether that is evidence that he was receiving UNRWA assistance or was entitled to it. That, and the circumstances in which the appellant left Gaza, requires a detailed factual evaluation.

47. In this case, however, the appellant has not given evidence. There is, I accept, a previous fact-finding appeal in which the appellant's account was disbelieved, but so far as I can discern there are no findings made in that decision with respect to whether or not he had received or was entitled to receive support from UNRWA, or if that was so, the circumstances in which that ceased. But that decision is not before me.

48. In assessing the evidence, I note that in his statement of August 2018 the appellant says he left the Gaza Strip in 2006 [3], but makes no statements regarding UNRWA, most of his statement being concerned with attempts he had made to return voluntarily. His fear of return [37] is based on fear of Hamas and he states also his life is in danger from the Israelis because of their bombing of Gaza [38].

49. Even taken at its highest this evidence does not address the questions set out above. That said, it is evident that the Secretary of State has not appeared properly to have complied with the API entitled Article 1D of the Refugee Convention: Palestinian Refugees Assisted by the United Nations Relief and Works Agency (UNRWA), Version 2; the process simply has not been undertaken but equally it is unclear that the appellant has ever said that he had been assisted by UNRWA or that that had ceased or the reasons why it had ceased. I do, however, note that it appears to be verifiable easily by e-mail to UNRWA with the appellant's consent.

50. It is, however, evident from the CPIN of December 2018 at [8.1.2] that in the Gaza Strip 70% of the population are registered refugees and that the eight camps administered by UNRWA has around ½ a million of Gaza's 1,258,559 refugees. Those who are eligible are as follows:

> The UNWRA website stated:
> 'Palestine refugees are defined as "persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict."
>
> 'UNRWA services are available to all those living in its area of operations who meet this definition, who are registered with the Agency and who need

> assistance. The descendants of Palestine refugee males, including adopted children, are also eligible for registration. When the Agency began operations in 1950, it was responding to the needs of about 750,000 Palestine refugees. Today, some 5 million Palestine refugees [across the Middle East]

51. The appellant has given no detail about his father, stating only that he had only his mother when he was a child, and thus, little or no basis for his claim to be entitled to UNRWA assistance.

52. As regards being able to enter Gaza the December 2018 CPIN provides at 17.5.1 as follows

> 17.5.1 The IRBC noted in a response of April 2016:region] are eligible for UNRWA services'
> '... an official at the Palestinian General Delegation in Ottawa stated that Palestinians require Israeli-issued IDs [called Hawiyeh, "identity card" in Arabic] ... in order to enter Palestine... The official further noted that it is not possible to obtain the Israeli-issued ID from abroad...
>
> 'Regarding the documents required for a Palestinian to enter and reside in Palestine, in addition to the Israeli-issued ID card, the official stated that "it depends on the situation" of the person entering and that Israel is the party that makes the decision (ibid. 19 Apr. 2016). The official explained that "being Palestinian" does not mean that Israel will grant the person access to Palestine (ibid.). While some Palestinians hold Palestinian passports for the purpose of external travel (with passport numbers that start with a zero), they "[do] not grant entry to Palestine" (ibid. 18 Apr. 2016). The official also noted that some Palestinians have travel documents issued by other countries which do not allow entry to either Palestine or to the country that issued the document (ibid.).
>
> 'A report by the UN Human Rights Council quotes information provided by Israeli human rights NGOs as stating that Israeli authorities require Palestinians to obtain permits to cross between Gaza and the West Bank and to enter and remain in large areas inside the West Bank (UN 20 Jan. 2016, para. 14). According to the same source, this "permit regime" allows Israeli authorities to "limit and control Palestinians' movement in the OPT beyond their immediate residential area" (ibid.).' Human Rights Watch in its February 2012 report observed:
>
> > 'Since the outbreak of the second Palestinian intifada, or uprising, in September 2000, Israel has denied entry to the Palestinian territory to non-registered Palestinians and to non-registered spouses and other family members of Palestinian residents; for example, the number of entry permits to the West Bank and Gaza dropped from around 64,000 in 1999 to 192 in the 10 months after November 2000.'

53. It is evident from Section 18 of the December 2018 CPIN that there is a population registry controlled by the Israelis and a significant number [18.1.2] of Palestinians are not registered. It is necessary to be on the population register to get an identity card and passport, identity cards being necessary to travel internally and to pass through checkpoints. ID

cards are also necessary in Gaza and these are tied to the population register and that they are compulsory from the age of 16.

54. Whilst it may be the case that the appellant had an ID card and was registered, there is no evidence from him on this issue. There is no reliable evidence regarding whether he had in the past obtained a passport issued by the Palestinian authority. Again, the issue of a passport is to an extent dependent on the issue of an ID card and it is remarkable in this case that there appears to have been no attempt to seek to verify the appellant's identity through an ID card or population register number. As is stated in the March 2020 Fact-Finding Mission Report at [2.2.3] after the occupation in 1967 every new-born child was registered in the paper records and from the age of 16 would be issued with an ID card and ID number comprising of nine digits. Further at [2.2.10] a representative from the Ministry of Civil Affairs in Palestine said this:-

> [2.2.10] To find out whether someone is on the Palestinian Population Registry, Malik explained 'A person can find out if they are on the registry by phoning or speaking to someone at the population registry office. It is possible and easy to make a telephone enquiry. The person can provide his father's ID details, or their own name and date of birth as well as their mother's name and date of birth. If the person has an ID number, the computer will find the information.'

55. There was in the evidence before me, no indication that this sort of enquiry has been done.

56. As regards UNRWA registration cards at Section 2.6, UNRWA is recorded as stating the registration offices in each of the areas are maintained in each of the areas and in the camps and that "it is quite easy to replace registration cards, if somebody loses their card for example, but there is a process and a procedure to be followed".

57. With respect to Gaza section 4 of the Fact-finding report records that the situation is acute:

> 4.1.3 B'Tselem explained 'There is gender-based violence, suicide, self-medication with anti-depressants, hopelessness, unemployment, malnutrition, lack of education. There are so many issues that are affecting Gaza and these issues are not a result of a natural disaster, it is purely the result of Israeli government decisions, compounded by Egypt, the PA and other international actors, and due to the Israeli blockade.'180
>
> 4.1.4 The diplomatic source noted, 'the situation in Gaza is well documented. There are UN reports which state Gaza will not be sustainable after 2020... Gaza's economy is blocked, there is no cash, no jobs, nothing can enter or exit Gaza without a high level of tax from Egypt, Israel and Hamas.

58. It is also apparent that it is difficult for people to leave Gaza, if at all through Israel, it being apparent [4.2.6] that exit even to get to the West Bank or abroad is controlled by Israel and there is a blanket restriction on exit and movement permits, which means that most exits are prohibited

and only allowed in some cases. The Rafah crossing is controlled by Egypt and exit costs thousands of dollars [4.5.2].

59. It is apparent also [4.13] that criticising Hamas is dangerous and may result in arrest and torture and that Hamas has taken a very tough position against demonstrations against them, fearful that it might lead to toppling their regime [4.13.10]. Torture is used systematically in Gaza detention centres [4.14.1], particularly no one is forced to join Hamas although many people have no other way to make a living [4.15.1]. There are serious humanitarian concerns, such that there is limited access to drinkable water and food [4.20]. There is in effect no infrastructure, the situation is worsening every day [4.20.8]. In addition property rates are high and unemployment is over 50%. Access to shelter and to livelihood is extremely problematic, some sources stating that Gaza is "already uninhabitable" [4.23.3 to 4.23.4]. In addition, there are chronic shortages of medical supplies and drugs.

60. Exit and entry into the West Bank is controlled by the Israelis but the humanitarian situation is not as bad as that in Gaza.

61. Turning next to the expert report of Dr Hafidh, no submission has been made by the respondent that I should not attach weight thereto or that Dr Hafidh is not to be treated as an expert witness. Having considered his credentials I am satisfied that he is entitled to be treated as an expert witness and that he has given a proper declaration in his report. I am satisfied also from his report that he has considered all the relevant material and that weight can be attached to his opinion.

62. Dr Hafidh's opinion is that it is unlikely that the appellant either as a documented or undocumented Palestinian could return to the occupied Palestinian Territories or the Gaza Strip. Further, if not documented he would not be able to access basic rights and would not be able to travel. He would not be able to travel to Egypt or to return through Rafah and that since 2008 Israel has frozen the regularisation of the legal status of Palestinian citizens in the Gaza Strip who had lost their identities [17].

63. The report is, however, predicated on the assumption the appellant is not registered, a matter which was for him to prove.

64. There is unfortunately a significant lack of evidence before me regarding the extent to which the appellant has been registered in the Gaza Strip or otherwise in the past. I bear in mind that the appellant has on several occasions tried to return voluntarily to Palestine, despite the problems he has but has been unable to do so owing to a lack of documentation. Why there is a lack of documentation or whether there is some I do not know; there is insufficient evidence on any of the relevant matters and whilst he says that he did not live in France for many years (witness statement, 5) and [9], the reality is that he has been found not to be credible and I have only his evidence for it that he gave the proper details and information to the IOM and/or anybody else in order to be able to return to Palestine.

65. I bear in mind the earlier findings made in respect of the appellant and as to his credibility. He has not provided any evidence that has been tested in order to rebut those findings, and applying the principles set out in Devase**elan**, I am not satisfied that his evidence is reliable. Further, he has not explained how it is that he was in receipt of UNRWA support, nor is there reliable evidence as to how, if he had, that had ceased.

66. The Appellant has not shown even to the lower standard of proof that he falls within Article 1D of the Refugee Convention as he has not shown that he has ever been in receipt of UNRWA assistance, or that he was entitled to it. He is not therefore excluded by operation of Article 1D.

67. Further, and in any event, given the lack of reliable evidence has he shown that he ceased to receive it on account of his personal being at serious risk such that it was impossible for UNRWA to guarantee his living conditions which would be compatible with its mission or that he was compelled to do so. He cannot therefore demonstrate that he his automatically entitled to be recognised as a refugee within the terms of Article 1A.

68. I then turn to whether the appellant is a refugee within the terms of Article 1A on the merits of his claim.

69. I am satisfied that the appellant is stateless and a Palestinian. I am satisfied also that the country of habitual residence is Israel given it has effective control over Gaza, but in any event it has not been seriously suggested by the Secretary of State that the country of former habitual residence is Egypt, the only other possible state having control of the Gaza Strip.

70. Even assuming that the appellant could return to Gaza via Israel to Gaza (an unlikely prospect to say the least), the appellant has satisfied me that he is without a passport and he is certainly unlikely ever to be permitted to enter Israel and thence travel either to the West Bank or the Gaza Strip. He is of course not a national of Israel.

71. In MA (Palestinian Territories) v SSHD [2008] EWCA Civ 304, the Court held [21]:

> 21. The question that arises is whether a stateless person who will be denied entry on return to the country of his former habitual residence thereby becomes a victim of persecution. It was considered, but not decided, in AK v Secretary of State for the Home Department [2006] EWCA Civ 1117, in which Richards LJ said, obiter , at
> paragraph 47:
>
> "That line of argument is beset with difficulties. I am far from satisfied that there is a true analogy between a state's denial of entry to one of its own citizens and denial of entry to a stateless person (who, unlike a citizen, has no right of entry into the country), or that denial of entry to a stateless person can be said to constitute a denial of his third category rights of sufficient severity to amount to

persecution (especially given the possibility of his exercising those rights elsewhere).

72. Neither that decision or MT v SSHD [2008] EWCA Civ 1149 assists the appellant nor was argument made on this point, despite the comments of Baker LJ at [47].

73. Having considered both MA and MT I find that there is nothing in the material before me which would cause me to depart from these decisions nor have submissions been made to me that I should do so.

74. I remind myself that I have to consider the hypothetical situation of what would occur to the appellant were he to return to Israel, that is, on the assumption that the appellant would be returned there.

75. I conclude, on the basis of MA and MT, that if the appellant as a stateless person were refused entry, that would not amount to persecution or a breach of article 3.

76. On the alternative assumption that the appellant would be returned to Gaza, I have considered whether the situation there would be such as to constitute persecution or a breach of article 3. While I accept that for many, the conditions are extreme, it does not follow that is so for all, and the appellant has not provided reliable evidence that his particular situation on return would reach that threshold.

77. For these reasons, I dismiss the appeal on asylum and humanitarian protection grounds.

78. The appellant submits in his most recent submissions that in the alternative his appeal should be allowed on statelessness grounds and/or article 8. The submissions do not, however, provide sufficient detail as to why that is so or on what ground of appeal a finding that he is stateless within the Immigration Rules could succeed, nor is there any attempt even to explain how he falls within the rules.

79. In terms of article 8, the appellant has again provided no proper basis for a submission that he meets the requirements of paragraph 276ADE(1) of the Immigration Rules or that his removal would be in breach of article 8 of the Human Rights Convention. He has not asserted any family life, and the extent of his private life is limited and he has never had leave to remain in the United Kingdom.

80. Given that the appellant does not meet the requirements of the Immigration Rules, significant weight is to be attached to the need to maintain immigration control, and limited weight is to be attached to his private life. While I accept that he has suffered from poor health in the past and has been street homeless, I am not , on the evidence and the case put to me, satisfied that his removal would be in breach of article 8 of the Human Rights Convention.

81. For all of these reasons, I dismiss the appeal on all grounds.

Notice of Decision

(1) The decision of the First-tier Tribunal involved the making of an error of law and set it aside.

(2) I remake the appeal by dismissing it on all grounds.

(3) I maintain the anonymity order made.

Signed Date 1 December 2021

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.