ar NA (Palestinians – Not at general risk) Jordan CG [2005] UKIAT 00094

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 8 October 2004

Date Determination notified:

01 feb 2005

Decision reserved

Before:

Mr J Barnes (Vice President)
Mr A R Mackey (Vice President)
Professor B R Gomes da Costa

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Representation
For the appellant : Mr S. Revindran from the Refugee Legal Centre (London)
For the respondent : Mr M. Blundell Home Office Presenting Officer

DETERMINATION AND REASONS

1. This determination is concerned with the position of ethnic Palestinians whose former habitual residence is in Jordan, in respect of which the Tribunal had before it the following background objective evidence:

   (a) US State Department Report on Jordan for 2003 published on 25 February 2004;

   (b) Report from Forced Migration on Line : 'Palestinian Refugees in Jordan' by Oroub Al Abed of February 2004;

(c) 'Palestinians in Jordan and Egypt: Holders of Travel Documents: Their Legal Rights?' by Oroub Al Abed (undated);

(d) A report published by Euro-Mediterranean Human Rights Network based on a Mission of Enquiry by Mohammed Tahi and Maria de Donoto entitled 'Refugees Also Have Rights' on the subject of Palestinian Refugees in Lebanon and Jordan following an EMHR Mission between 17-28 September 2000.

On the basis of their consideration of these documents, this determination gives the guidance of the Tribunal as to the position of Palestinian asylum seekers from Jordan.

2. The appellant was born on 22 September 1954 in the Gaza Strip in a refugee camp run by UNRWA. From 1966 until 1990 he lived with his family in Kuwait when they moved there following displacement. After the first Gulf War the Kuwaiti government expelled Palestinian nationals and his family and he then moved to Jordan. The appellant arrived in the United Kingdom on 29 July 1998 with a valid Jordanian passport endorsed with entry clearance as a visitor, and he was admitted on that basis. At that time he also had an Egyptian travel document. On 31 October 1998 the appellant made an in-time application for asylum but for reasons which are not apparent, he does not appear to have been issued with a self-evidence form for completion until 21 June 2002, which was duly returned to the respondent, who subsequently interviewed him. His asylum application was refused for the reasons set out in a letter dated 14 August 2003. On the same day the respondent issued notice of his refusal to vary leave to enter or remain in the United Kingdom and the appellant appealed against that decision on both asylum and human rights grounds pursuant to section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. His appeal was heard on 2 December 2003 by Dr K.F. Walters, an Adjudicator, who recorded the appellant's basis of claim at paragraph 16 of his determination as follows:

> 'The appellant claims that, as a result of the creation of the State of Israel, his family settled in a refugee camp in the Gaza Strip, registered with UNWRA, and was issued with Egyptian travel documents. After the Israeli occupation of the Gaza Strip, his family moved to Kuwait. However, after the Gulf War in 1990, the Kuwaiti government expelled all Palestinians. The appellant travelled to Jordan. It was

> the only country which, at that time, would accept Palestinian nationals.
>
> According to the appellant, after he had travelled to Kuwait, he learned that persons who had been born in the Gaza Strip were to be given a temporary Jordanian passport, issued by the Jordanian Embassy in Kuwait.
>
> In 1989, the Jordanian Embassy in Kuwait refused to renew the appellant's passport, deciding, thereafter, to renew yearly.
>
> In 1996, the Jordanian Government refused to renew the appellant's passport and imposed a fine upon those persons who were born in the Gaza Strip.
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> In September 1997, the appellant started a case to have his passport renewed and, on 16 June 1998, his passport was renewed for two years.
>
> In 1995, the appellant's wife left Kuwait to join him in Jordan and, thereafter, her application for a Jordanian passport was refused. She was only given four months' permission to remain in Kuwait, until October 1995. However, to date, the appellant's wife was still living in Jordan, illegally, paying a penalty of 1.5 Jordanian Dinar each day. Since 1995, the Jordanian government has tried several times to deport the appellant's wife.'

4. The Adjudicator did not believe that account save that he was prepared to accept that the appellant is a Palestine 'national', born in the Gaza Strip, on 22 September 1954, and that he was currently married, had no relatives in the United Kingdom, and that his wife and children were currently living in Jordan. Beyond that the appellant's claims were rejected by the Adjudicator for the reasons which he sets out at paragraphs 17 to 20 of his determination.

5. The grounds of appeal do not challenge the adverse findings made by the Adjudicator in relation to his personal account, the very limited acceptance of which we have set out above. The challenges in the grounds of appeal are as follows: firstly, that the Adjudicator failed to identify the country of habitual residence in relation to which the claimed fear of persecution was to be measured; secondly, that at paragraph 15 of his determination he referred to Israel and the

Occupied Territories; thirdly, that the Adjudicator was wrong in referring to the appellant as a 'Palestinian national' as there is no such thing and the appellant is stateless; fourthly, that the appellant's habitual residence was confused with Jordan, with specific reference to paragraphs 18 to 21 of the determination; and, fifthly, that the Adjudicator was wrong in not considering the country to which the appellant was to be removed as the removal directions were not clear in that respect.

6. In granting permission to appeal, the President noted that he was not clear which country the Adjudicator had in mind in assessing risk because he referred to Jordan as the country of feared persecution and return but examined Israel and the Occupied Territories for background.

7. It is unfortunate that the Adjudicator was not assisted by any representation for the Secretary of State at the hearing before him. The only objective evidence which the respondent had filed was a country report relating to Israel and the Occupied Territories and since, by its nature, there are no removal directions where the appeal is against a decision to refuse to vary leave to remain, the only relevant evidence from the respondent might be taken to indicate an intention on his part to return the appellant to the country in respect of which he has filed objective country evidence. Before us, Mr Blundell made it clear that the intended country of removal is Jordan, which is the last country of habitual residence of the appellant. There are only two references in the Adjudicator's determination to Israel and the Occupied Territories. The first is at paragraph 3(b) where he records that was the country in respect of which the respondent had submitted background evidence, and the second is at paragraph 15 of his determination where the Adjudicator says this:

> 'In reaching my conclusion, I have taken fully into account the general country information in respect of Israel and the Occupied Territories. Whilst I am prepared to accept that in Israel and the Occupied Territories there are regular abuses of a wide range of fundamental human rights in a manner which undoubtedly gives rise to persecution under the 1951 Refugee Convention in certain cases, I am quite unable to accept that this appellant has demonstrated he is at risk of persecutory harm.'

8. Apart from that single reference, everything else is directed to the position of the appellant in Jordan. In referring to the standard and

burden of proof at paragraphs 7 to 9 of the determination, the Adjudicator says in terms at paragraph 9 :

> 'The burden lies on the appellant to show that returning him to Jordan will expose him to a real risk of persecution for one of the five grounds recognised in the 1951 Refugee Convention, or a breach of his protected human rights.'

9. At paragraph 11 he repeats, in his analysis of the appellant's claim as set out in the self-completion questionnaire, at interview, in written statements and in oral evidence, that it is based on his fear of what would happen to him 'if returned to Jordan'.

10. Paragraphs 16 to 19 of the determination are concerned with setting out the basis of claim and the reasons why the claims as to what has happened to him in Jordan are rejected save for the limited positive findings which we have noted above. Save for noting at paragraph 19 of the determination that the appellant had claimed before him that he had tried to return to the Gaza Strip but the Israeli government refused, it is the situation in Jordan to which the Adjudicator directs his mind including, as is apparent by his reference to them in paragraph 16 of the determination, the objective materials before him in relation to treatment of Palestinians from the Gaza Strip in Jordan. Moreover, it is apparent from paragraphs 22 to 31 of the determination where the Adjudicator considers the nature of persecution and Article 3 prohibited treatment, particularly by his reference to what Professor Hathaway defines as level 3 rights, which are contrasted with the breaches of fundamental rights which are more usually regarded as being relevant to issues of persecution, that the Adjudicator is looking at the situation of denial of core rights referable to the Appellant's claims as to his treatment in Jordan.

11. It appears to us wholly clear from a full analysis of the determination that what the Adjudicator was primarily considering was whether removal to Jordan would be in breach of the United Kingdom's obligations. It may be that he felt obliged by reason of the objective material filed on behalf of the respondent to refer, as he does at paragraph 15 of the determination, to the situation in Israel and the Occupied Territories, but it is quite clear that that is an isolated reference and that he understands the claim and approaches it on the basis of prospective removal to Jordan.

12. Before us, Mr Revindran accepted that the issue was whether the Adjudicator had erred in law in his consideration of what would happen to the appellant if now returned to Jordan on the basis of the

limited acceptance by the Adjudicator of some elements of his claim. He sought to rely on a letter apparently from the General Intelligence Department of the Jordanian Government to their General Director of Passport Department in relation to an application which he said had been made by the appellant's nephew for a Jordanian passport in June 2004. He sought also to rely on what was said in the covering letter accompanying that document from a non-governmental organisation in this country, Kingston Advocacy, purporting to relay what the nephew had told the writer of that letter about his attempts to renew his passport in Jordan. We did not regard this, insofar as it might be proper to admit it, as evidence to which any weight could be given. The purported translation of the letter was not certified and related to other correspondence which had not been exhibited, so that for both those reasons little weight could be attached to it. The covering letter from Kingston Advocacy sought to make assertions as to what the nephew said had happened to him and his family. But even if that was evidence which could properly be admitted as to a changed situation, the proper way to deal with it would have been by way of application to the Tribunal for leave to call the nephew to give oral evidence capable of being cross-examined.

13. Mr Revindran next submitted that the appellant, if returned, would be likely to be detained on arrival, and he asked us to infer from that, that this would lead to a reasonable likelihood of persecution of the appellant on the basis that, notwithstanding that the law in Jordan prohibited abuse of detainees, the State Department Report recorded that 'the police and security forces sometimes abused detainees during detention and interrogation, and allegedly also used torture'. He accepted, however, that he could point to no evidence of any likelihood of arrest of the appellant if he were now returned, but invited us to infer that that might happen because the report revealed that there was a level of discrimination on the part of Jordanians against ethnic Palestinians. He did not, however, seek to suggest that on the objective evidence such discrimination would of itself amount to persecution for the purposes of the Refugee Convention.

14. In his submissions to us Mr Blundell accepted that the appellant was a stateless person but it was clear that when he arrived in the United Kingdom he had a valid Jordanian passport and it was the view of the Secretary of State that he could renew it as he had done before.

15. He referred us to all the passages in the current US State Department Report dealing with the situation of Palestinians in Jordan. These make it clear that most Palestinians living in Jordan are citizens who receive passports valid for five years, but that there are estimated to be some 150,000 Palestinian refugees who do not qualify for citizenship. This

group is able to obtain Jordanian passports but at different times they have been granted for varying numbers of years. Currently it appears that they receive three year passports valid for travel but which do not confer citizenship rights. Previously, when Jordan disengaged in both administrative and legal terms from the West Bank in 1988, Palestinians residing there received two year passports for travel purposes only, but in 1995 West Bank residents without other travel documentation were again said to be eligible to receive five year passports. In 2001 it was reported that Jordanian passports of some citizens were confiscated where they were carrying both Jordanian and Palestine Authority travel documents on the basis that this was consistent with laws forbidding dual citizenship in Arab League states, although this has otherwise been suggested to be based only on informal agreements rather than on legislation. At the end of 2003 human rights activists reported that some twelve hundred citizens of Palestinian origin remained outside Jordan due to refusal to renew their passports at embassies overseas, most now living in Syria, Lebanon or Libya as stateless persons. That is disputed by the Jordanian government who say that no Jordanian citizens are refused passports but that only non-resident Palestinians who seek to renew travel documents requiring proof of residency in Jordan have been refused.

16. It is clear that the Jordanian government responds to emergency situations since during 1993 it had agreed to admit persons displaced by the hostilities in Iraq. The report states that the government granted protection to 2,773 third country nationals en route to their countries of origin, while approximately 1,200 Palestinian refugees were granted protection at the UNHCR camp at Ruweshed. The report further states that almost 1.7 million Palestinian refugees are registered in Jordan with UNWRA which also covers another 800,000 Palestinians as either displaced persons from the 1967 war, arrivals following that war or returnees from the Gulf between 1990 and 1991. The report acknowledges that there is discrimination in Jordan against Palestinians but this is treated more fully in the other documents comprised in the appellant's bundle.

17. The paper on Palestinian refugees in Jordan for February 2004 notes that over 60% of the population in Jordan are of Palestinian origin and the same author, in his other report, says that Palestinians in Jordan face the following problems because they hold temporary passports:

> ‘1. They are forbidden to work in the government. In addition, they cannot have professional practice certificates from Syndicates.

2. They are not entitled to health care fee exemption. They depend on UNWRA clinics and health centres but they must pay for their health care. In the past they benefited from fee exemptions .. [but this policy changed some number of years ago].

3. For higher education they must compete for the 5% of seats left for Arab foreigners in public universities. Names are usually provided by the embassy. The Palestinian Embassy usually sends the names of those living in Palestine holding the PA [Palestinian Authority] travel document ... Holders of the two year passport are treated as foreign students and must pay separate fees ...

4. They have difficulties in obtaining Egyptian visas and are forbidden to go to Syria with a two year passport.

5. Because they do not have a national ID number, they are not entitled to personal civil cards or to family books.

6. In case of any delays in renewing the passport, they are asked to go the State Security Department and they must get a certificate stating that they have committed no criminal offence. They may face many other obstacles because of this delay.

7. In case of membership of any organisation or association, especially Islamist ones, the renewal of the travel document is impossible.'

18. Although perhaps in more detail, the areas of discrimination are similarly identified in the report by the EMHRM Mission, although that report speaks of the Palestinians who have been given Jordanian nationality being strongly discriminated against in matters of award of government posts where 90% of those posts are reserved for people of Jordanian origin.

19. It is Mr Blundell's submission that even taking all these matters into account, the discrimination relates to what are classified as third level rights and, as Mr Revindran had previously conceded, could not be said to be of such a nature as to lead either to persecution or breach of protected human rights under Article 3 of the European Convention. In particular, there was no reference at all to detention or ill-treatment in

detention by reason of Palestinian ethnicity, whether at point of entry into Jordan or subsequently for those Palestinians living there.

20. We are satisfied, looking at the objective evidence placed before us, that Mr Blundell's submissions are correct.

21. In his submissions to us, Mr Revindran sought to make much of the practicality of return of the appellant but, as was pointed out by the Court of Appeal in Saad Diriye and Osorio v Secretary of State for the Home Department [2001] EWCA Civ 2008, all asylum appeals are hypothetical in the sense that they involve the consideration of a hypothesis or assumption that a future act of removal or requirement to leave would be contrary to the United Kingdom's obligations under the Refugee Convention. Although what was considered in that case was the effect of the wording of Section 69 of the Immigration and Asylum Act 1999 and of the earlier provisions of Section 8 of the Asylum and Immigration Appeals Act 1993, a similar hypothetical approach remains appropriate by reason of the wording of the relevant sections in the Nationality, Immigration and Asylum Act 2002 which applies to this appeal.

22. What we are required to do is to consider whether, given the assumption that the appellant has been lawfully returned to Jordan as his former country of habitual residence, there would then be a real risk of persecution for a Refugee Convention reason, namely his Palestinian ethnicity. The same position applies to our consideration of whether there would be a real risk of breach of his Article 3 rights under the European Convention. Issues of practicality of return are, at least initially in human rights terms, a matter for the Secretary of State. A similar issue as to practicability of return was raised with the Tribunal in Pavlov [2002] UKIAT 02544, a case concerning the proposed removal of an ethnic Russian to Estonia where he was formerly habitually resident. The Tribunal said this at paragraph 13:

> "… The most that could be said on the evidence before us was that the Secretary of State might not be able to effect practical removal but Mr Jones [the Presenting Officer] made clear to us that if the Respondent were not admitted by the Estonian authorities, then it was the policy of the Secretary of State that the Respondent would be re-admitted to the United Kingdom so that his position could be reassessed on the basis that he was a stateless person. There would be no question of any repeated attempt to remove him to Estonia without such reconsideration. There is, in our judgment, a clear distinction between the question of lawfulness of intended removal, in respect of which there is specific provision for challenge under section 66 of the

> Immigration and Asylum Act 1999, and the practicability of removal to a country to which the person in question may be lawfully removed under the powers given by Parliament to the Secretary of State. If the proposed removal is lawful, the Immigration Appellate Authorities are not concerned with the question of its current practicability. Were it otherwise, the obviously absurd situation that a failure by somebody unlawfully here to take steps open to him or her to procure the necessary travel documents readily available to them on application would prevent their lawful removal.

It must be assumed that the Secretary of State will not seek to remove the appellant to Jordan other than lawfully and this will entail the provision of appropriate travel documentation to secure his entry on his arrival. If such travel documentation is not available or if the appellant is not admitted on arrival, then the Secretary of State will not be able successfully to remove the appellant to Jordan and will have to reconsider his position. That is a matter with which he is concerned but we are not and, given that there is no objective evidence that this appellant or members of the class to which he belongs, namely Palestinian refugees formerly habitually resident in Jordan, are reasonably likely to be persecuted or otherwise treated in breach of their protected human rights under Article 3 in Jordan, if admitted, it follows that the appellant cannot succeed before us.

23. That is the conclusion at which the Adjudicator arrived on the basis of the evidence before him. Unless there is a material error of law on his part in reaching that conclusion, then the Tribunal has in any event no power to interfere with his decision by virtue of the provisions of section 101 of the 2002 Act which permits appeal to the Tribunal only on an identified point of law. Our primary finding is that the grounds of appeal point to no such arguable material error of law on the part of the Adjudicator, but we acknowledge that he does not deal as fully as we have done with the objective evidence which was before him as to the position of ethnic Palestinian refugees in Jordan. In case, therefore, we are wrong in our primary finding of absence of material error of law, we have also considered the objective evidence which has been placed before us as appears above. For the reasons which we have given, taking into account the latest objective evidence before us, we are satisfied that the appellant cannot succeed.

24. In summary we make the following findings:

(a) The grounds of appeal do not identify any material error of law on the part of the Adjudicator

(b) If we are wrong in that, we are satisfied on the totality of the evidence before us that ethnic Palestinians, whether or not recognised as citizens of Jordan, are not persecuted or treated in breach of their protected human rights under Article 3 of the European Convention in Jordan by reason of their ethnicity, although they may be subject there to discrimination in certain respects in their social lives in a manner which does not cross the threshold from discrimination to persecution or breach of protected human rights;

(c) There is nothing to distinguish this appellant from the generality of ethnic Palestinians in Jordan which is his country of former habitual residence and which he was able regularly to leave on travel documents issued to him by the Jordanian authorities notwithstanding that he is not recognised as a citizen of Jordan.

(d) Applying the ratio in Saad Diriye and Osorio, it is our function to consider whether, on his hypothetical return to Jordan, he would be at real risk of persecution which, on the facts as established, he is not;

(e) As regards Article 3, we are not concerned with issues as to the practicality of his return which are, to the extent explained in paragraph 22 above, a matter for the Secretary of State.

25. For the above reasons, the appeal is dismissed.

J. BARNES
VICE PRESIDENT