IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND **[2019] NZIPT 801588**

AT AUCKLAND

Appellant:	**AE (Lebanon)**
Before:	B Dingle (Member)
Representative for the Appellant:	D Mansouri-Rad
Counsel for the Respondent:	No Appearance
Date of Hearing:	26 April 2019
Date of Decision:	28 May 2019

DECISION

INTRODUCTION

[1] This is an appeal against a decision of a refugee and protection officer declining to grant refugee status or protected person status to the appellant, a Palestinian who was born and raised in Lebanon.

[2] The primary issue to be determined by the Tribunal is whether the appellant is excluded from the 1951 *Convention Relating to the Status of Refugees* ("Refugee Convention") by the operation of Article 1D which applies, in certain circumstances, to persons being protected or assisted by United Nations ("UN") organs and agencies other than the Office of the United Nations High Commissioner for Refugees ("UNHCR"). If so, the appellant will not be entitled to recognition as a refugee under section 129 of the Immigration Act 2009 ("the Act").

[3] Given that the same claim is relied upon in respect of all limbs of the appeal, it is appropriate to record it first.

THE APPELLANT'S CASE

[4] The account which follows is a summary of that given by the appellant at the appeal hearing. It is assessed later.

[5] The appellant's parents were both born in the former territory of Palestine and fled Palestine to live in Lebanon as a result of the 1948 Arab-Israeli war. The family are Sunni Muslims. The appellant and his siblings were all born in Beirut, Lebanon. The father worked for the Palestine Liberation Organisation ("PLO") in a role in which he raised and distributed funds for the PLO. The appellant's parents and all of their children, including the appellant, were registered as Palestine refugees with the United Nations Relief and Works Agency for Palestine Refugees in the Near East ("UNRWA").

[6] The appellant was born in the 1960s. He completed his primary and secondary school education in Beirut. Soon after leaving school, he travelled to Russia and undertook study in the Russian language. He was funded to do so by the PLO. Thereafter he began a bachelor's degree in engineering in Russia.

[7] In 1991, the appellant was advised that his father had been killed in Athens by the Israeli National Intelligence Agency. The appellant was so distressed by his father's death that he took a year-long break from his studies. In 1994, he completed his engineering degree and, in 1996, he completed a master's degree. Following that, he worked for an electronics firm in Russia.

[8] After approximately four years working in Russia, the appellant found work as a sales engineer in the United Arab Emirates ("UAE"), where his older brother AA also lived and worked.

[9] In 2004, the appellant married BB, an Egyptian national. In early 2006, their daughter was born. During his time working in the UAE, the appellant was able to save a considerable amount of money and he purchased four apartments in Egypt as an investment.

[10] In 2014, the appellant was dismissed from his employment. He tried to find another position in the UAE but was not successful. Consequently, he and BB decided to move back Egypt to establish a new business. In Egypt, the appellant signed a number of legal documents provided by his wife's lawyer which he thought related to the purchase of a further property and the registration of a company. However, in amongst the documents was a document stating that the appellant would abandon all of his property and bank funds to his wife and daughter. The

appellant signed this document without reading the detail or understanding its purpose. Some months later, the appellant was advised by his wife that she and the daughter were going to visit a relative for a few days. After her departure, the appellant was approached at home by men carrying weapons. They advised the appellant that he had to leave the house immediately, that the house was no longer his and that his wife had filed for divorce. In some confusion the appellant went to his father-in-law's house. There, he was advised by his father-in-law that all of his property was now in the name of his wife and that there was likely nothing that the appellant could do because he had signed the documents himself. The appellant visited the police, but they said that they could not assist given that the appellant had signed the documents himself. The appellant believes that they were dismissive of him because he is a Palestine refugee and had no permanent immigration status in Egypt.

[11] In late 2014, the appellant applied for a transit visa for New Zealand, but the application was declined.

[12] In 2015, the appellant returned to Lebanon because he was not able to remain in Egypt following the breakdown of his marriage. He lived with his mother and sister. His brother AA was still living and working in the UAE and had been sending remittances to the mother and sister. When the appellant had been employed prior to mid-2014, he too had provided financial support to his mother and sister. Once the appellant no longer had an income or savings, he also received approximately USD200 a month from his brother. The appellant used this to buy medication for his blood pressure, and depression and sleeping pills.

[13] In October 2015, the appellant flew to Fiji, en-route to Australia. He was interdicted in Fiji and found to be in possession of a fraudulently altered Israeli passport. He was immediately returned to Lebanon. AA had paid for the passport and the travel.

[14] On return to Lebanon, the appellant sought work. He answered newspaper and internet advertisements and walked around local businesses asking for employment. Whenever he applied for work in a professional engineering capacity, he was asked whether he had completed professional registration with the Lebanese Engineers Association. However, he was unable to do so because he of his Palestinian nationality. For that reason, potential employers would not consider him as a candidate. For many other low-skilled jobs, the appellant was told he was either too old or too skilled. He believed that many of the lowest-paid jobs went to Syrians, who were prepared to work for even lower wages than Palestine refugees

in Lebanon ("PRL"). A PRL was prepared to work for 30–40 per cent of what a Lebanese person would be paid, yet a Syrian refugee would undercut that by a further half.

[15] Eventually, the appellant found work in a hotel as a cashier. That employment ended after six or seven months, when the appellant was simply told he was no longer required. He then took a role as a supervisor in a supermarket which opened in his local suburb. However, after two months of employment, the appellant realised he would not be paid. For the first month, the employer claimed that they would keep the first month's salary as a sort of employment bond. However, when the appellant was not paid properly for subsequent work, he realised that he was simply being exploited and left the employment.

[16] In late-2016, the appellant made another attempt to settle outside Lebanon through an associate who lived in Ecuador. The appellant understood that there was a job available in Ecuador and that he would be eligible for a residence visa there. However, when the appellant was still travelling there, his associate told him that the job was no longer available. After discussing the situation with AA, the appellant decided to return to Lebanon because AA could not afford to support him while he tried to find other employment in Ecuador.

[17] On return to Lebanon, the appellant did not find other employment and relied on the remittance sent by AA to meet his basic needs and medical expenses.

[18] On a number of occasions between 2016 and 2018, the appellant experienced health problems associated with his high blood pressure. He required hospitalisation. Because he was a Palestine refugee, the appellant was not entitled to use the public health system and had to pay a deposit of USD200 before he would be admitted into the hospital. Depending on the treatment required, further payment was required. When the appellant was hospitalised, his sister would ask AA for extra money to cover his medical bills.

[19] In 2018, in another attempt to earn income, the appellant and his brother decided to invest in a sandwich and juice business. They could not register the business formally (due to being PRL), but they were feeling desperate to create an income for the family and were prepared to take the risk. The appellant rented and decorated premises and employed people to serve sandwiches and juices. However, the shop was operating in an area frequented by drug users, alcoholics and gangs and there were several problems for the staff because of this. After a

couple of months, it was clear that the business was not going to be profitable. The appellant sold the business for a loss and gave up the lease of the property.

[20] In late 2018, in another attempt to depart Lebanon, the appellant obtained a further false passport using his own name and date of birth but indicating that he was a citizen of the UAE. He used this passport to attempt to enter New Zealand. He was stopped at the border, where he claimed refugee and protected person status. He has been held in custody since that time.

[21] The appellant claims that if he returns to Lebanon he will have the same difficulties he has had previously when trying to obtain employment and support himself. He will not be able to obtain employment, in part because of the discrimination against Palestinians in the labour market in Lebanon. Moreover, when AA is no longer able to support the family through his salary, the appellant will not be able to afford to pay rent on the family home or to pay for his medical treatment relating to high blood pressure and depression. There is no financial help available from UNRWA such that the appellant's basic needs would be met.

Material and Submissions Received

[22] The Tribunal and the appellant have been provided with the files of the Refugee Status Branch ("RSB"), including copies of all documents submitted at first instance. In addition to the appeal form lodged on 15 April 2018, the following material has been provided to the Tribunal:

(a) Supplementary statement of the appellant (22 April 2019).

(b) Copy of an Australian refugee decision: 1113683 [2012] RRTA (9 August 2012) addressing issues relating to Article 1D of the Refugee Convention.

(c) A copy of a District Court decision (27 February 2019) regarding Immigration New Zealand's application for a further warrant of commitment for the appellant. The decision also refers to the appellant's allegation that he could not properly access his medication while in detention.

(d) On 1 May 2019, a copy of an email letter from AA outlining his personal circumstances in UAE, his financial support of family members and copies of statements from his sister's bank account in Lebanon.

(e) On 3 May 2019, copies of documents relating to the appellant's medical treatment prior to travelling to New Zealand including prescriptions for depression and anxiety, high blood pressure and cardiac health tests.

(f) On 3 May 2019, copies of the appellant's tertiary qualifications; a copy of AA's UAE Resident Identity Card; copies of AA's bank statements (2016–2019) showing regular transfers of money to an account in the name of the appellant's sister in Lebanon with a description of each payment given showing the sister's name and the words "Living expenses". The payments are made every two to four months and while the amounts change, they are a minimum of approximately USD2000.

(g) On 3 May 2019, an email from AA, in response to a Tribunal inquiry as to whether he can continue working in the UAE until he turns 65 years of age. In response, AA advises that due to the downturn in the construction sector in UAE, he is currently on "open leave", meaning that he is not working or being paid, because there are no new projects for him to take on. He does not believe that he will be given a further visa in such circumstances.

(h) On 3 May 2019, a bundle of documents relating to the appellant's medical care and medications prescribed to him while he has been in custody in New Zealand. The records indicate two incidents in which the appellant has needed immediate medical attention in prison — once for chest pain and on another occasion for dizziness that resulted in him falling over and knocking his head. The medical notes also record that, on arrival in New Zealand, the appellant took daily medication for anxiety, high blood pressure and to help him sleep. He also reported a history of asthma. He was not permitted to retrieve his own medications for use in prison. On 21 November 2018, it was noted that he has hypertensive disease. After an unexplained delay, he appears to have been prescribed medication for high blood pressure on 4 December 2019.

(i) On 9 May 2019, further documents relating to the appellant's medical treatment prior to coming to New Zealand along with English translations.

[22] On 24 April 2019, copies of material contained on the Immigration New Zealand compliance file was provided to the Tribunal and the appellant.

ASSESSMENT

[23] Under section 198 of the Act, on an appeal under section 194(1)(c) the Tribunal must determine (in this order) whether to recognise the appellant as:

(a) a refugee under the Refugee Convention (section 129); and

(b) a protected person under the 1984 *Convention Against Torture* (section 130); and

(c) a protected person under the 1966 *International Covenant on Civil and Political Rights* ("the ICCPR") (section 131).

[24] In determining whether the appellant is a refugee or a protected person, it is necessary first to identify the facts against which the assessment is to be made. That requires consideration of the credibility of the appellant's account.

Credibility

[25] For the purposes of this appeal, the Tribunal accepts the appellant's account as credible.

[26] The appellant gave evidence to the Tribunal which was broadly consistent with the final version of his evidence to the RSB. It is also consistent with relevant country information (discussed in detail below) regarding the current situation for PRL including discrimination and exploitation in the labour market, the inability to access secondary and tertiary medical care through UNRWA and the economic crisis being experienced in Lebanon. His account as to his medical conditions of hypertensive disease and chronic depression is corroborated by the documentary evidence of medical treatment in both New Zealand and prior to his travel here. His claim that the family in Lebanon rely on remittance from AA in the UAE is corroborated by the bank account documents from both AA and his sister in Lebanon.

[27] Inasmuch as there is some doubt as to how long AA will be able to continue working in the UAE, the Tribunal accepts AA's account that his workplace is affected by the significant construction downturn in the UAE (an event widely detailed in

available country information). In that context it is plausible that AA will find it difficult to maintain his employment even until the expiry date of his current visa in 2020.

[28] For completeness, the Tribunal observes that it has not overlooked the fact that the appellant initially gave RSB a false account of his family situation and the reasons for his claim. In brief, he initially claimed that he had lost contact with his family members in the 1980s at around the time of the War of the Camps. He also claimed that, in 2016, he had been abducted from Lebanon by Hezbollah and forced to attend a military training camp. Both of these claims were untrue, as discovered by the RSB when it inspected the appellant's laptop computer and mobile telephone. When confronted with the information which indicated his first account was not true, the appellant conceded that he had given an untrue account. He said that he believed if he presented himself as an individual without family and at risk of being targeted by Hezbollah, he had more chance of being recognised as a refugee.

[29] While the Tribunal does not condone the telling of untruthful accounts at any stage of the refugee status determination process, it has long recognised that some appellants do so, for a range of reasons. The telling of untruths, while properly a matter to be weighed in a credibility assessment, does not preclude a later account being accepted as true. In this appeal, having seen and heard the appellant, and considering all the evidence before it, the Tribunal accepts the appellant gave false evidence in a misguided attempt to bolster his chance of being recognised as a refugee. His false evidence does not impugn his later account, which is corroborated in significant ways by documentary evidence.

Findings of Fact

[30] The Tribunal finds that the appellant is a Palestine refugee from Lebanon. He is registered with UNWRA. His mother and sister, also UNRWA registered, remain living in Lebanon. His mother is physically disabled as the result of a probable stroke in the 1990's due to hypertensive disease and she requires constant care. His sister provides that care and so does not have employment outside the home. He has another sister who lives permanently in Egypt and a brother, AA, who currently lives in the UAE. Since 2014, when the appellant lost his job in the UAE, AA has been the sole financial support for the family in Lebanon.

[31] When AA can no longer secure a work visa in the UAE, he and his wife will return to live in Lebanon. At present, AA is not working or being paid because his construction firm does not have sufficient work projects to provide work for him.

[32] The appellant suffers from hypertensive disease and depression. He requires medication for both, as well as intermittent laboratory and other cardiac function testing to monitor his cardiac health. On occasion, he requires hospitalisation to bring his blood pressure under control. He is unable to perform taxing physical work due to his health.

The Refugee Convention

[33] Section 129(1) of the Act provides that:

> "A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention."

[34] Article 1 of the Refugee Convention provides a detailed definition of those who are entitled to be recognised as a refugee. In terms of the main inclusion clause, it provides:

> "**Article 1**
>
> Definition of the term "Refugee"
>
> **A.** For the purposes of the present Convention, the term 'refugee' shall apply to any person who:
>
> (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;
>
> Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;
>
> (2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.
>
> In the case of a person who has more than one nationality, the term 'the country of his nationality' shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.
>
> **B.** …
>
> (1) For the purposes of this Convention, the words 'events occurring before 1 January 1951' in article 1, section A, shall be understood to mean either:

> (a) 'events occurring in Europe before 1 January 1951'; or
>
> (b) 'events occurring in Europe or elsewhere before 1 January 1951', and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.
>
> (2) Any Contracting State which has adopted alternative *(a)* may at any time extend its obligations by adopting alternative *(b)* by means of a notification addressed to the Secretary-General of the United Nations."

[35] In addition, Article 1 contains a cessation clause (Article 1C) and three separate exclusion clauses (Articles 1D, 1E and 1F) which define those persons who are not entitled to be recognised as a refugee.

[36] Article 1D is relevant here because it excludes Palestine refugees and provides (emphasis added):

> "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**."

[37] For the purposes of this appeal the first paragraph is referred to as Article 1D(1) (also known as "the exclusion clause") and the second paragraph as Article 1D(2) (also known as "the inclusion clause").

[38] The historical context and drafting history of Article 1D was traversed in detail by the Tribunal (differently constituted) in *AD (Palestine)* [2015] NZIPT 800693–695 at [79]–[100] and that material does not need to be repeated here.

[39] To the extent necessary and relevant in this appeal, the Tribunal adopts the findings of the Tribunal in *AD (Palestine)* in relation to the interpretation and application of Article 1D.

[40] As explained by the Tribunal in *AD (Palestine)* at [74]:

> "Article 1D thus has both exclusionary (paragraph one) and inclusionary elements (paragraph two). Paragraph one provides for a mandatory exclusion from the Convention. If applicable, it operates as a complete bar on access to the benefits of the Refugee Convention unless the inclusionary criteria contained in paragraph 2 also applies on the facts. Should Article 1D *apply as a whole*, in such circumstances, the claimant is '*ipso facto*' entitled to 'the benefits of the Convention.'"

[41] The Tribunal interpreted the personal scope of Article 1D to include those Palestinians who fall within the class of Palestine refugees who were or are entitled to receive UNRWA assistance: *AD (Palestine)* at [154]–[160].

[42] The UNRWA *Consolidated Eligibility and Registration Instructions (CERI)* (CERI) (October 2009) specify and define categories of persons eligible to receive UNRWA assistance. For the purposes of this particular appeal, the relevant category is at Clause 1 of the CERI and includes the descendants of male 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.

Protection or Assistance Ceased for any Reason

[43] The next issue that arises in the interpretation of Article 1D is whether such protection or assistance can be said to have "ceased for any reason". In *AD (Palestine)* the Tribunal noted that, while cessation of the UNRWA as an agency would certainly fulfil the requirement in Article 1D(2), other circumstances could amount to *de facto* cessation "in certain compelling circumstances" at [162] and [189]–[190].

[44] In support of an interpretation which accepts *de facto* cessation, the Tribunal in *AD (Palestine)* noted that the language of Article 1D(2) clearly focuses on the cessation of the *protection and assistance* being provided, not the ongoing existence or operational status of UNRWA or the United Nations Conciliation Commission for Palestine as agencies: (*AD (Palestine)* at [164]).

[45] The Tribunal found support for that interpretation from the words of the Egyptian representative at the *UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons* A/CONF.2/SR.19 (1951) who, when explaining the amendment that would become Article 1D, made it clear that the rationale was focused on the cessation of aid rather than the cessation of the agencies (emphasis added):

> "so long as United Nations institutions and organs cared for such refugees their protection would be a matter for the United Nations alone. However, **when that aid came to an end** the question would arise of how their continued protection was to be ensured. It would only be natural to extend the benefits of the Convention to them…"

[46] Various judicial interpretations of Article 1D also support this approach, most notably the Court of Justice of the European Union (CJEU) in Case C-364/11 *El Kott*

and Ors v Bevándorlási és Állampolgársági Hivatal (CJEU, Grand Chamber, 19 December 2012) (the "El Kott decision") which held, at [62], that the purpose of Article 1D was:

> "to ensure that Palestinian refugees continue to receive protection, as Palestinian refugees, until their position has been definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations."

[47] The CJEU went on to find, at [65], that the cessation element of Article 1D (as transposed under Article 12(1)(a) of the 2004 EU Qualification Directive):

> "must be interpreted as meaning that the cessation of protection or assistance from organs or agencies of the United Nations other than the HCR 'for any reason' includes the situation in which a person who, after actually availing himself of such protection or assistance, ceases to receive it for a reason beyond his control and independent of his volition. It is for the competent national authorities of the Member State responsible for examining the asylum application made by such a person to ascertain, by carrying out an assessment of the application on an individual basis, whether that person was forced to leave the area of operations of such an organ or agency, which will be the case where that person's personal safety was at serious risk and it was impossible for that organ or agency to guarantee that his living conditions in that area would be commensurate with the mission entrusted to that organ or agency."

[48] In December 2017, two years after the publication of *AD (Palestine),* the UNHCR released its *Guidelines on International Protection No 13: Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestine Refugees* ("the UNHCR Guidelines"). These updated the guidelines released in 2009. The UNHCR Guidelines were prepared in close cooperation with UNRWA and after broad public consultation. They take particular account of the Tribunal's decision in *AD (Palestine)* and the El Kott decision, including in relation to what circumstances may amount to *de facto* cessation in Article 1D(2).

[49] As to the "Inclusion clause" of Article 1D (namely 1D(2)), the UNHCR Guidelines make the following statements (emphasis added):

> "18. Palestinian refugees (see paragraph 8) benefit from 1951 Convention protection under Article 1D(2) when the protection or assistance of UNRWA has ceased. **Read in light of its ordinary meaning, considered in context and with due regard to the object and purpose of the 1951 Convention, the phrase 'ceased for any reason' is not to be construed restrictively.** As noted in jurisprudence, exclusion from the 1951 Convention of Palestinian refugees by way of Article 1D 'was intended to be conditional and temporary, not absolute and permanent.'
>
> 19. The application of the second paragraph of Article 1D is not, however, unlimited. Protection under the 1951 Convention does not extend to those applicants who, being outside an UNRWA area of operation, refuse to (re-)avail themselves of the protection or assistance of UNRWA for reasons of personal convenience. That said, the reasons why one has left an UNRWA area of operation (for example, for work or study purposes, or for protection reasons) is not of itself determinative. **What is pivotal is whether the protection or assistance of**

> **UNRWA has ceased owing to one or more of the 'objective reasons' for leaving or preventing them from (re)availing themselves of UNRWA's protection or assistance as set out [below] ....** If a person has no objective reasons for not (re)availing themselves of UNRWA's protection or assistance, then such protection or assistance cannot be regarded or construed as having ceased within the meaning of the second paragraph of Article 1D when a Palestinian refugee can safely enter the UNRWA area of operation.
>
> 20. The inclusion assessment needs to be carried out not only having regard to UNRWA's mandate and operations, but also to the circumstances of the individual and to relevant and up-to-date country of origin information (COI)."

[50] The UNHCR Guidelines then outline a succession of "Objective reasons" which would bring an individual within 1D(2), namely:

(a) Termination of the mandate of UNRWA.

(b) Inability of UNRWA to fulfil its protection or assistance mandate.

(c) Threat to the applicant's life, physical integrity, security or liberty or other serious protection‑related reasons.

(d) Practical, legal and/or safety barriers preventing an applicant from (re)availing him/herself of the protection or assistance of UNRWA.

[51] As to the relevance of the personal characteristics and circumstances of a particular appellant, these must also be taken into account in an assessment of whether protection or assistance has ceased in accordance with Article 1D(2), as they would be in any assessment under Article 1A(2). This approach was adopted in *AD (Palestine)* and the El Kott decision and was emphasised in the UNHCR Guidelines at [24]:

> "**Personal circumstances of applicant**
>
> 24. The personal circumstances of the applicant are relevant to the determination of whether one of the objective reasons exists to justify the application of the second paragraph of Article 1D. Thus, each claim must be determined on its individual merits, enabling consideration of factors that are specific to the applicant. These personal circumstances may include age, sex, gender, sexual orientation and gender identity, health, disability, civil status, family situation and relationships, social or other vulnerabilities, ethnic, cultural or religious considerations, political and social links and compatibility, language abilities, and any past experiences of serious harm and its psychological effects."

[52] As will be discussed below, the outcome in this appeal turns on an assessment of the issue set out in [50](b) above — that is, whether, given his personal characteristics and circumstances, there is an inability of UNRWA to fulfil its protection or assistance mandate to the appellant.

Assessment of the Claim to Refugee Status

Article 1D(1)

[53] The appellant falls within Article 1D(1). His father was a Palestine refugee who fled the former Palestine territory to Lebanon where he registered with UNRWA. In due course, the appellant and his siblings were also registered. The appellant's registration with UNRWA has been verified by New Zealand authorities. The Tribunal is therefore satisfied that, as a person registered with UNRWA, the appellant is eligible for UNRWA assistance and that he is therefore a person to whom the exclusion clause in Article 1D(1) applies.

[54] Having found that the appellant falls within the coverage of Article ID(1), the Tribunal must assess whether the protection or assistance has "ceased for any reason" for the appellant, in which case he shall *ipso facto* be entitled to the benefits of the Convention.

Article 1D(2)

[55] In order to make an assessment of whether there is an inability of UNRWA to fulfil its protection or assistance mandate to the appellant, it is necessary to review country information as to the operation of UNRWA and the situation of PRL.

Country information

[56] The presence of PRL dates back to the 1948 Palestinian exodus, also known as the Nakba. It is estimated that up to 750,000 Palestinian Arabs fled their homes in territory that is now part of Israel to various other locations including Gaza, the West Bank, Jordan, Lebanon and Syria.

[57] UNRWA was established in December 1948. It defined Palestine refugees 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". The UNRWA mandate was later expanded to include the descendants of male Palestine refugees and individuals who had to flee as a result of the 1967 war. Its current services encompass education, health care, relief and social services, camp infrastructure and improvement, microfinance and emergency assistance, including in times of armed conflict, with the overall purpose being to help Palestine refugees achieve their full potential in human development; see UNRWA *Who We Are* at www.unrwa.org.

[58] The UNRWA *Draft Annual Operational Report 2018* (April 2019) records that Lebanon currently "hosts the highest number of refugees, per capita, of any country in the world" (at [1.1.2]). At the end of 2018, there were approximately 475,075 PRL registered with UNRWA although information sources indicate the actual number living there to be much lower because many of those registered have left the territory in search of better socio-economic conditions. UNRWA also records 950,000 UNHCR-registered refugees from Syria and an additional 29,038 Palestine refugees in Syria (PRS) who have fled Syria and are now registered with UNRWA in Lebanon (at [1.1.2]).

[59] The precise number of refugee and other populations in Lebanon is difficult to estimate given that there has been no official census for many decades. The overall population of Lebanon is estimated to be over six million, a rise of nearly two million since 2010, largely because of the huge influx of Syrians as a result of the Syrian war; see Department of Foreign Affairs and Trade (Australia) *Country Information Report: Lebanon* (19 March 2019) at [2.6].

UNRWA financial situation

[60] UNRWA is funded almost entirely from state and other voluntary donations. This has always been a matter of some concern in terms of the sustainability of its operations. However, the funding of UNWRA has hit crisis point in recent years with the international humanitarian system being put under enormous strain by multiple humanitarian crises requiring financial and operational burdens on reception states, UN agencies, state donors and non-government organisations.

[61] In the UNRWA *Financial Report and Audited Financial Statements for 2017* (13 September 2018) at pp9–10, for the year ended 31 December 2017, the UNRWA auditors summarised the year's funding situation and financial outlook as follows (emphasis added):

> "UNRWA is primarily funded through voluntary contributions. In 2017, total contributions were $1,207.44 million, of which voluntary contributions were $1,156.45 million (96 per cent), and total expenses amounted to $1,310.44 million
>
> …
>
> UNRWA continues to experience financial difficulties in carrying out its mandate of serving the Palestine refugees. In 2017, the Agency carried forward a programme budget cash deficit of $49 million and has projected a further deficit of $397 million for the year 2018. Therefore, the projected overall deficit for the year 2018 is $446 million, including $49 million from the previous year. The increase in deficit is a result of suspended contributions amounting to $400 million from one of the major donors in respect of the years 2017 and 2018. **This situation threatens the Agency's ability to deliver its core mandate to Palestine refugees. While the Agency**

> **continues with its effort to mobilize resources from various donors to curb the impact of the projected deficit, it also continues with the implementation of austerity measures aimed at substantially reducing non-core operations costs as a serving strategy**."

[62] Already at the point where expenses were outstripping income, the financial woes of UNWRA intensified further. The United States had previously been the most generous and reliable donor to UNRWA operations; see UNRWA *Resource Mobilization Strategy 2019–2021* (2019) at [11]. However, in January 2018, the United States announced that it would reduce its annual contribution to UNRWA by USD300 million (almost a quarter of the operational funding budget of UNWRA), from USD360 million to USD60 million. As noted by the UNRWA Commissioner-General Pierre Krähenbühl, the result was that UNRWA was confronted with "an existential crisis"; see "Open letter from UNRWA Commissioner-General to Palestine Refugees and UNRWA Staff" (1 September 2018) at www.unrwa.org.

[63] While some of the funding shortfall was mitigated through a global, 'Dignity is Priceless' fundraising campaign, UNRWA also had to implement reductions in its emergency interventions and service programme and suspend other programmes so as to keep critical services operational throughout the year; see UNRWA *Draft Annual Operational Report 2018* (April 2019) at p4.

Impact on PRL

[64] The available information indicates that there is little current prospect of UNRWA being able to provide a sustainable level of financial assistance to PRL individuals and families who cannot otherwise meet their basic needs.

[65] UNRWA operates a "Social Safety Net Programme" (SSNP) in an effort to directly support those it categorises as being in "abject poverty". This comprises a cash payment of $10 per family member every three months. That amount is unlikely to provide even basic necessities (see discussion of living costs below at [75]).

[66] Moreover, in 2015, even before the funding withdrawal by the United States, there were already 6,500 PRL on the waiting list for SSNP payments. These were people who were eligible for payments (that is, they were in abject poverty), but could not receive payments due to the UNRWA's financial constraints; see American University of Beirut & UNRWA *Survey on the Socioeconomic Status of Palestine Refugees in Lebanon 2015* (2016) at p24. Given the country information cited herein as to the deteriorating financial situation in both Lebanon generally and

for UNRWA, it is reasonable to conclude that the number of people who currently need the SSNP payments but cannot access them will have increased between 2015 and the current time.

[67] The opportunity for PRL to access other humanitarian aid is also limited. As noted in analysis by L Khoury "Palestinians in Lebanon: 'It's like living in a prison'" *Al Jazeera* (16 December 2017), the humanitarian aid available in Lebanon is often focused on the more recently arrived Syrian population:

> "Today, Palestinians are competing with nearly two million Syrian refugees in Lebanon for jobs and aid.
>
> 'The vast majority of international humanitarian aid coming into Lebanon is focused on the Syrian refugee crisis, which means we are overlooking the long-standing human rights violations that Palestinians have faced here for decades,' [a Human Rights Watch spokesperson] said.
>
> The United Nations Relief and Works Agency (UNRWA) deals with aid for Palestinians, while the UN High Commissioner for Refugees (UNHCR) covers Syrians - and the difference in the aid provided is stark. UNHCR gives 150,000 Syrians in Lebanon $175 a month per family; UNRWA, however, can only give 61,000 Palestinians $10 for each family member every three months, spokespersons told Al Jazeera. Both agencies say they target whoever is considered the most vulnerable."

Prospects for PRL to be self-sufficient

[68] Adding to the plight of the PRL population, their ability to be financially self-sufficient is adversely affected by a number of other relevant factors.

[69] There has always been a significant marginalisation and social exclusion of the PRL population compared with Lebanese citizens. Following a change in legislation in 2001, Palestine refugees may not own land or other immovable property. Those living outside the refugee camps are therefore vulnerable to eviction from houses and business premises at the whim of Lebanese owners; see, for example, "Property rights scarce for Palestinians in Lebanon" *The New Humanitarian* (23 December 2013) and UNRWA *Protection Brief – Palestine Refugees Living in Lebanon* (June 2018).

[70] With regard to earning a livelihood, the PRL population faces significant structural constraints and systemic discrimination. They cannot formally own or register a business outside of a refugee camp. They are limited in their ability to obtain professional employment due to legislation which requires "foreign" workers to be from a state where there is reciprocity of treatment for professional workers. Given that Palestine refugees have no state, they cannot fulfil that requirement and are prevented from being employed in at least 39 professions, including law,

medicine and engineering. They are also restricted from some semi-skilled work in farming, fishery and public transportation (unless they are employed within the confines of a refugee camp); see UNRWA *Protection Brief – Palestine Refugees living in Lebanon* (June 2018); Department of Foreign Affairs and Trade (Australia) *Country Information Report: Lebanon* (19 March 2019) at [3.6]; and UNRWA *Draft Annual Operational Report 2018* (April 2019) at [1.1.2]

[71] For most PRL, their employment situation is now precarious. While in 2010 the unemployment rate for PRL was comparable to the Lebanese rate of eight per cent, by 2015 it had increased to 23 per cent for PRL; American University of Beirut & UNRWA *Survey on the Socioeconomic Status of Palestine Refugees in Lebanon 2015* (2016) at p86. The same report records that the overwhelming majority of PRL workers have no work contract and are only employed on a casual, verbal basis. Over half of all PRL workers are paid on a daily basis, 37 per cent are paid on a by-piece/by-service basis and eight per cent are in seasonal employment. This means that most PRL have no job security. There is no certainty from day to day or week to week whether their employment will continue. For almost all PRL workers, employment conditions such as annual and sick leave, and limits on working hours are non-existent (at pp89–90).

[72] Since 2015, the availability of employment for PRL has deteriorated further due to the influx of Syrian refugees. This has resulted in a highly competitive labour market in which individuals in a dire state of poverty are prepared to work for extremely low wages. As a result, PRL are even more vulnerable to exploitation than they already were. Some employers reportedly refuse to pay even the agreed wages, or demand long working hours with no overtime or payment. Because most workers have no contracts, there is no protection or remedy available to them; see UNRWA *Protection Brief – Palestine Refugees living in Lebanon* (June 2018), and L Khoury “Palestinians in Lebanon: 'It's like living in a prison'” *Al Jazeera* (16 December 2017).

[73] The employment sector issues also need to be understood in the context of the wider socio-economic climate in Lebanon. After years of poor economic growth, high national debt, rising costs, corruption and unstable governance, Lebanon is facing an economic crisis. This is exacerbated by the Syrian civil war which has reduced Lebanon’s trade with one of its major markets, halted the flow of goods from Lebanon through Syria to other Gulf States and put Lebanon’s fragile public service infrastructure under enormous pressure. As summarised in the UNRWA *Draft Annual Operational Report 2018* (April 2019) at [1.1.2] (emphasis added):

> "The ongoing Syria crisis continues to exert a negative impact on Lebanon's socioeconomic climate, affecting public service delivery, finances and the environment, placing further pressure on the economy's already weak public finances and infrastructure. Within a context marked by high unemployment rates and intense competition for scarce job opportunities, Palestine refugees are among the most vulnerable and marginalized populations in Lebanon. While PRL remain barred from 39 professions and face discrimination in the labour market, the situation is further exacerbated for PRS due to their fragile legal status. **As a result, Palestine refugees struggle with high rates of poverty and food insecurity and face difficulties in securing their livelihoods**."

[74] A precise assessment of basic living costs in Lebanon is difficult to make but the following publicly available sources provide useful guidance. In the American University of Beirut & UNRWA *Survey* on *the Socioeconomic Status of Palestine Refugees in Lebanon 2015* (2016) at p54, it is reported that in 2015, each PRL spent an average of USD195 per month (which included an imputed rent cost for those who are being provided with UNRWA housing). This compared with an average per capita spend of USD429 per month for Lebanese citizens. A snapshot of consumer prices in Beirut provided on the *Numbeo* website indicates that, as at May 2019, a single adult person's monthly costs, without rent, would amount to USD513.37; see Numbeo *Cost of Living in Beirut* (updated in May 2019) at www.numbeo.com. That is clearly beyond the income of many Lebanese citizens and appears to include costs for things such as transport, dining out and entertainment which may not be basic living costs. Nevertheless, the *Numbeo* site usefully records that a one-bedroom apartment outside the city centre would cost approximately USD490 per month, a litre of milk would cost USD2.10, 12 eggs USD3 and one kilogram of rice USD1.93. Similar sorts of rent and living costs are estimated on websites which provide information for potential long-stay travellers and expatriate workers; see, for example, www.nomadlist.com/cost-of-living/beirut and www.expatistan.com/cost-of-living/index.

PRL access to Health Services

[75] The ability of the PRL population to access adequate health care is significantly inhibited by both financial and resource constraints. In a 2016 report by UNHCR, *The Situation of Palestinian Refugees in Lebanon* (February 2016) at p8, the access to health services by PRL was summarised as follows:

> "UNRWA reportedly provides comprehensive primary health care such as general medical checks, preventative maternal and child care, radiology and dental care, free of charge. However, not all medical services are available at all UNRWA health clinics and as a result refugees may have to visit other clinics outside the camps, e.g. for dental treatment or laboratory tests.
>
> In addition, UNRWA financially assists refugees with partial cost coverage for treatment in secondary and tertiary health care in UNRWA-contracted hospitals. In

> light of high levels of unemployment and poverty, refugees, especially those suffering from chronic diseases and those in need of complex medical procedures, may be unable to bear the high costs of treatment. Many refugees reportedly have to rely on assistance from relatives, friends, NGOs, or charities, sometimes running up debts.
>
> Health services available to Palestine refugees in Lebanon are reported to be chronically underfunded and insufficient to cover existing and growing health needs."

[76] A more recent report from the non-government organisation Medical Aid For Palestinians, *Health in Exile: Barriers to the Health and Dignity of Palestinian Refugees in Lebanon* (May 2018) ("MAP report"), at p4, records the same concerns about access to health services because of the expense of private health care and underfunded publicly available services:

> "Palestinians in Lebanon have historically faced significant obstacles to the realisation of their right to health. Private healthcare in Lebanon is prohibitively expensive for most, meaning that many are reliant on healthcare services from UNRWA and the Palestinian Red Crescent Society (PRCS), both of which are seriously under-funded. Palestinians also face legislative and practical obstacles to their right to work, including in health-related fields."

[77] At p5, the MAP report records that PRL have "scant access to quality healthcare". There is no provision of public health services to PRL by the Lebanese government. There is no health care beyond the basic primary care offered by UNRWA. While private healthcare, including hospital and specialist care is available, it is described as being "prohibitively expensive". The UNRWA primary health services that are available PRL are described as being "chronically overstretched" with doctor-patient consultation times being an average of less than three minutes.

[78] In regard to its provision of health services, UNRWA states at p26 of its *Draft Annual Operational Report 2018* (April 2019) that:

> "During the year, average daily medical consultations per doctor did not meet 2018 targets in any field due to staffing deficits coupled with a 2.3 per cent year-on-year increase in the Agency-wide number of consultations provided (from 8,364,502 consultations in 2017 to 8,554,035 consultations in 2018). As is well documented, UNRWA faced a severe funding crisis in 2018. As a result, controls were placed on all non-critical recruitments to ensure the continuity of services and the most efficient utilization of available resources. Under the health programme, this meant that posts vacated due to retirements or for any other reason were not replaced. The only exception to this measure pertained to critical posts that were filled by daily paid staff who tended to be less well trained. This approach, while necessary under the circumstances, created efficiency gaps that had the overall effect of increasing Agency-wide average daily consultations per doctor."

[79] Other country information corroborates the MAP report's assessment that health services are "shrinking" and there are also issues with the provision of and access to mental health and psychosocial services in that comprehensive service is

not available. The UNRWA *Medium Term Strategy 2016-2021* (22 August 2016) notes at [114] that:

> "Health services in … Lebanon have begun to more thoroughly address the mental health and psychosocial support needs of clients. More work is, however, required to establish structured referral systems for complex mental health needs and to adequately build the capacity to deal with basic issues of mental health and psychosocial well-being…."

Application to the facts

[80] The Tribunal has found that, as a Palestine refugee registered with UNRWA, the appellant is eligible for UNRWA assistance and that he is therefore a person to whom the exclusion clause in Article 1D(1) applies.

[81] The country information before the Tribunal establishes that, at the present time, UNRWA is experiencing a dire funding shortfall such that it cannot fund any secondary or tertiary medical treatment for Palestine refugees. Even basic primary health services have been impacted by the funding crisis with replacement of medical personnel being delayed and services being cut. Nor does UNRWA have sufficient funds to provide financial or basic needs support, even for all of those who fall within the criteria of living in "abject poverty".

[82] That would apply to the appellant. For some years, he has been dependent upon his brother, AA to provide him with financial support that enables him to feed and clothe himself. He has been unable to find stable employment in Lebanon because of discrimination based upon his status as a PRL. He has been unable to establish a legal business that would provide him with an adequate income for the same discriminatory reasons.

[83] If the appellant were to return to Lebanon now, his brother AA would be unable to financially support him for the foreseeable future because AA is not currently working. AA's ability to resume remittance in the future is not sufficiently certain for the appellant to have any reliance on it.

[84] Moreover, the Lebanese economy is in poor shape, which has impacted on all of those looking for employment. The opportunity for the appellant to leverage what limited employment opportunity exists in Lebanon will be constrained by the routine and systemic discrimination practised against PRL in the labour market, which he has experienced in the past. This is in breach of his rights under Articles 2(2) and 6 of the 1966 *International Covenant on Economic Social and Cultural Rights*.

[85] On that basis, the appellant will not be able to access, either privately or through UNWRA, financial assistance sufficient to provide the necessities of life, nor any assistance to pay for his ongoing medication and, possibly, hospitalisation costs. For the appellant, with his particular medical presentation, a lack of sufficient medical care may well result in significant cardiac issues or stroke.

[86] For the reasons given, in particular the inability of UNRWA to guarantee access to even the most basic living allowance and adequate medical services, the Tribunal finds that for the purpose of Article 1D(2), the assistance of UNWRA to which the appellant is entitled has *de facto* ceased. According to Article 1D(2), the appellant is therefore *ipso facto* entitled to the benefits of the Refugee Convention.

[87] As to whether the appellant should be recognised as a refugee under the Act, this Tribunal adopts the same interpretation and application of the statutory framework as set out in *AD (Palestine)* at [236]-[242], as follows.

[88] Section 124 sets out the purpose of refugee status determination procedures contained in Part V of the Act. This relevantly provides:

> "The purpose of this Part is to provide a statutory basis for the system by which New Zealand—
>
> determines to whom it has obligations under the United Nations Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees; and
>
> …"

[89] Section 127 of the Act sets out the context for decision-making. This provides:

> "(1) Every claim under this Part must be determined by a refugee and protection officer.
>
> (2) In carrying out his or her functions under this Act, a refugee and protection officer must act—
>
> (a) in accordance with this Act; and
>
> (b) to the extent that a matter relating to a refugee or a person claiming recognition as a refugee is not dealt with in this Act, in a way that is consistent with New Zealand's obligations under the Refugee Convention.
>
> (3) The text of the Refugee Convention is set out in Schedule 1."

[90] The Tribunal in *AD (Palestine)* observed that the words "under the Convention" in section 127 necessarily mean the Convention as a whole and this is reflected in the Act by, for example, the domestication of Article 1C and 1F considerations in the Act. It notes that while no similar express duty to is set out in the Act in relation to Article 1D, the Act, it clearly contemplates such a decision

should, where appropriate, be made as part of the overarching duty under section 129 to recognise a person as a refugee only if they are a refugee "under the Convention." In support of this view, it is relevant to note that under section 145(b)(iii) of the Act, one of the grounds under which a refugee and protection officer may cancel a previous grant of refugee status is that:

> "the refugee and protection officer has determined that the matters dealt with in Articles 1D, 1E, and 1F of the Refugee Convention may not have been able to be properly considered by a refugee and protection officer (or a refugee status officer under the former Act) for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information; .."

[91] Clearly then, the application of Article 1D of the Refugee Convention must, when appropriate, be determined when considering whether an individual should be recognised as a refugee pursuant to the Act. While Article 1A(2) of the Refugee Convention provides the definition ordinarily relied upon in claims for refugee status, it is not the only one. Article 1D provides another pathway by which a claimant can be determined to be a refugee "under the Convention".

[92] For all the reasons given above, the Tribunal finds that the appellant is entitled to be recognised as a refugee under section 129 of the Act.

The Convention Against Torture

[93] Section 130(1) of the Act provides that:

> "A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand."

[94] The appellant is recognised as a refugee. By virtue of section 129(2) of the Act (the exceptions to which do not apply), he cannot be deported from New Zealand. This is in accordance with New Zealand's *non-refoulement* obligation under Article 33 of the Refugee Convention and also section 164(1) of the Act. Accordingly, the appellant is not a person requiring protection under the *Convention Against Torture*. He is a not protected person within the meaning of section 130 of the Act.

The ICCPR

[95] Section 131 of the Act provides that:

> "(1) A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

...

(6) In this section, cruel treatment means cruel, inhuman, or degrading treatment or punishment."

Assessment of the Claim under the ICCPR

[96] For the reasons given in relation to the claim under the *Convention Against Torture*, the appellant cannot be deported from New Zealand. Accordingly, he is not at risk of being returned to either arbitrary deprivation of life or cruel, inhuman or degrading treatment or punishment. He is not a person requiring protection under the ICCPR. He is not a protected person within the meaning of section 131(1) of the Act.

CONCLUSION

[97] For the foregoing reasons, the Tribunal finds that the appellant:

(a) is a refugee within the meaning of the Refugee Convention;

(b) is not a protected person within the meaning of the *Convention Against Torture*;

(c) is not a protected person within the meaning of the *International Covenant on Civil and Political Rights*.

[98] The appeal is allowed.

Order as to Depersonalised Research Copy

[99] Pursuant to clause 19 of Schedule 2 of the Immigration Act 2009, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellant's name and any particulars likely to lead to the identification of the appellant.

"B Dingle"

B Dingle
Member

Certified to be the Research Copy released for publication.

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