Neutral Citation Number: [2008] EWCA Civ 1150

Case No: C5/2008/0332/AITRF

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/10/2008

Before:

LORD JUSTICE SCOTT BAKER
LORD JUSTICE WALL
and
LORD JUSTICE WILSON

- -

Between:

SH (PALESTINIAN TERRITORIES)	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -
- -

Mr Christopher Williams (instructed by **Messrs Arden**) for the **Appellant**
Mr Jeremy Johnson (instructed by **Treasury Solicitor**) for the **Respondent**

Hearing date: 24 July 2008

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Judgment

Lord Justice Scott Baker :

1. The appellant is a stateless Palestinian from the West Bank and this appeal raises the same point as that in *MT (Palestinian Territories) v Secretary of State for the Home Department* [2008] EWCA Civ 1149. That point is whether this court is bound by the earlier decision of this court in *MA (Palestinian Territories) v Secretary of State for the Home Department* [2008] EWCA Civ 304. *MA* decided that denial of return to a stateless person to his country of former habitual residence did not of itself give rise to recognition as a refugee under the 1951 Geneva Convention relating to the status of refugees. Unfortunately it was not possible for administrative reasons for *MT* and the present case to be heard consecutively by the same constitution. However, Mr Christopher Williams, who has appeared for the appellant in the present case, adopts all of Mr Fordham's arguments in *MT* and indeed has annexed a copy of Mr Fordham's skeleton argument in that case to his own.

2. Both Mr Fordham and Mr Williams have made clear that they wish to reserve their positions on whether *MA* was correctly decided in the event that, as in my view is the case, it is a binding authority that determines the outcome of the appeals to this court in *MT* and the present case.

3. I do not repeat in this judgment the reasons I gave in *MT* why, in my view, *MA* is indistinguishable. In short, the argument of the appellants in both *MT* and the present appeal focuses on the observations of Maurice Kay L.J at para 26 and Lawrence Collins L.J at para 44 that it is not without more in principle persecutory to deny a stateless person re-entry to his country of former habitual residence. It is said that the "more" in both *MT* and the present case is that the exclusion was on the ground of race. However, in my view that is no distinction because *MA, MT* and the present appellants are all stateless Palestinians from the West Bank.

4. The facts of the present case are, of course, different from those in *MT* but I am unpersuaded that any difference is material to the extent that they provide the "more" without which the case falls within the principle in *MA*. Neither the appellant nor *MT* nor *MA* wants to return to the West Bank; each has unsuccessfully claimed that if returned he or she would be persecuted for a Convention reason.

5. The appellant is female but like *MA* and *MT* she has no wish to exercise any right of re-entry to the West Bank. How, it may be asked, can the refusal to permit her to exercise a right she does not wish to exercise amount to persecution? The facts of her case bear some examination because they do not lie easily with her contention that she will, on arrival at the King Hussein bridge be refused re-entry to the West Bank and thereby be subjected to persecution for a Convention reason, namely on the ground of race.

6. The appellant appeals against a re-consideration by Senior Immigration Judge Perkins promulgated on 28 November 2007. The sole ground of appeal is that his finding that depriving her of the right to return to the West Bank was not persecution was wrong in law.

7. She is aged 35 and travelled with her husband to the United Kingdom arriving in London on 30 June 2004. Her husband claimed asylum two days later, nominating the

appellant and the children as dependants. The claim was refused on 31 August 2004 and the appeal against that decision was dismissed on 18 December 2004.

8. The appellant's husband applied to the Palestinian General Delegation for papers to enable return to the West Bank but was told on 3 October 2006 that passports could only be issued in Palestine and not in the United Kingdom.

9. On 17 November 2006 the appellant applied for asylum naming her husband and the two children as dependants. In brief her case was that her husband had worked in Israel as a farm supervisor where he became friendly with two men who, unknown to him, were members of Hamas. The two men were murdered and armed men from Hamas went to the family home in an effort to find the appellant's husband who, they assumed, had been instrumental in securing the death of the Hamas members. They told the appellant that her husband was a traitor and ordered her to be divorced. The appellant, her husband and their children left Israel and made their way to the United Kingdom. The appellant and her husband were told by family members in November 2006 that they were both still being sought by Hamas.

10. The immigration judge disbelieved the appellant and applied *AB and Others (Risk – Return – Israeli Checkpoints) Palestine CG* [2005] UKIAT 00046 that there was no general risk to people returning to the West Bank. He also relied on *AK (Palestine) v Secretary of State for the Home Department* [2006] EWCA Civ 117 holding that if the appellant and her family were refused admission into or out of Israel the circumstances of statelessness would not result in such a refusal amounting to persecution or a breach of other international rights. The immigration judge's attention was not drawn to *MA (Palestinian Arabs – Occupied Territories – Risk) Palestinian Territories CG* [2007] UKAIT 00017 the decision in which was promulgated by the AIT after the argument but before his decision. That decision was appealed to the Court of Appeal and their decision is the one that is in my judgment binding on the present case.

11. A reconsideration was eventually ordered by Dobbs J. and the matter was heard afresh by Senior Immigration Judge Perkins. He said at para 26:

> "I do not accept that the act of removing some right to which a person would otherwise be entitled is of the same magnitude of interference as refusing to renew a licence to do something that was tolerated. Ordinary general knowledge is enough to show that a very large number of people identifying themselves as Palestinians live in extremely difficult conditions in places governed by people who are not Palestinians. A Palestinian living in the West Bank has no rights in the state of Israel. If the state of Israel refuses to permit him to return he has lost nothing. In reality he will have to do his best to establish himself in another country where he will be tolerated but not truly belong."

12. He went on to rely on *MA* which was at that stage a country guidance case in the tribunal. He said that in the absence of special evidence and following the decision in *MA* he did not accept that the harm caused to the appellant in the event of her being

refused re-admission was so severe that it entitled her to international protection. He continued:

> "If the appellant cannot be returned she will have lost her home. She left that when she left Israel. Generally, a person in her circumstances can re-establish herself elsewhere without fear of serious ill-treatment. There is no reason to find that this appellant's circumstances justify different findings."

13. *MA* appealed to this court against the decision of the tribunal. This court's decision is at [2008] EWCA Civ 304. The respondent submits that the only question in the present appeal is whether Israel's likely refusal to permit the appellant to re-enter the West Bank if she is forcibly removed there amounts to persecution; the answer is that it is not and *MA* is determinative of this appeal.

14. Mr Jeremy Johnson, for the Secretary of State, points out that the appellant's reliance on refusal of re-entry emerged after her husband's asylum claim had been refused and an appeal dismissed. She did not adduce any evidence on the point, and there are therefore no relevant factual findings. He submits the factual context must be taken to be that the appellant would be able to enter the Occupied Territories if she returned voluntarily with the appropriate documentation, but that she would not be able to do so if she was forcibly returned without the appropriate documentation.

15. Mr Johnson developed his argument that the appellant's re-entry point was the last roll of the dice and that her actions mirrored those of her husband. He pointed out that it is very important to look at such evidence as there is. The argument was first raised before the AIT in para 2 of the appellant's skeleton argument of 12 February 2007 where it was said:

> "The appellant and her family have previously applied for permission to travel to the West Bank. This has not been processed by the Palestinian Delegation Office. In the case of *AB* [2005] it is confirmed that the Palestinian Delegation Office cannot assist with returns to the Occupied Territories."

But, submits Mr Johnson, the point was raised in an evidential vacuum.

16. The Deputy Head of Mission of the Palestinian General Delegation in London wrote to the appellant's husband on 3 October 2006 in the following terms:

> "With reference to your request to issue you a Palestinian passport to enable you to travel back to Palestine, we in the Palestinian General Delegation in the UK cannot issue any passports as all passports must be issued in Palestine to Palestinians who are resident in the West Bank and the Gaza Strip. For Palestinian I.D cardholders there is a special procedure which they should follow in order to obtain a Palestinian passport from Palestine.
>
> For further details please do not hesitate to contact me."

According to the appellant's husband that letter followed a visit to the Palestinian General Delegation that had taken place the same day.

17. On 7 December 2006 the appellant was interviewed by the Home Office. The answers to questions 67 – 70 are relevant.

> "Q 67: What do you think will happen if you return to Palestine?
>
> A: Hamas will kill me and kill my husband.
>
> Q 68: Are you aware of an application made by your husband to the Palestinian authorities?
>
> A: Yes
>
> Q 69: Why did you apply to the authorities if you fear for your lives?
>
> A: This was a second try because we had no choice, no other solution.
>
> Q 70: Would you have returned if they had issued you with passports?
>
> A: After the phone call was received from my husband's brother I am scared for my life and my children's too."

This interview was followed by a letter from the appellant's solicitors it expanded on these answers.

> "…at the time her husband made an application to the Palestinian Delegation Office, everything was (calm) in the West Bank. That the couple had hoped that Hamas had forgotten them, so that we could return to our home, instead of living in (destitution). Her husband also borrowed money from people in order to buy food when they had none. The person who wanted his money back persecuted them. As her husband had working restriction, we could not pay back the money. The couple were desperate to leave the United Kingdom. In addition to this, we submit that this application does not undermine their case, as the couple did not approach Hamas but a Palestinian Delegation Office in the UK. In addition to this the Office holds very little power, as they cannot issue travel documents in any event. We refer you to the case of *AB* [2005] which confirms this. We have informed you of the closure of the border at the interview. This is further confirmed in the above case law, which is still the country guidance case for Palestine.
>
> The asylum claim was made as her brother in law informed her husband that Hamas were looking for her. That they were now

> looking for all traitors again in order to claim the West Bank from Israeli collaborators."

Although clumsily expressed, the purport of the letter is reasonably clear.

18. The Home Office refusal letter is dated 21 December 2006. It pointed out at para 20 that her application for asylum in her own right with her husband and children as dependants post-dated her husband's application for a Palestinian passport to enable travel back to Palestine and the Palestinian Delegation's reply that there was a special procedure to follow to obtain a Palestinian passport.

19. Paragraph 29 of the letter referred to the appellant's answer to Q 70 in the interview and her reference to the new threat from Hamas and said it was not credible she had a genuine fear of Hamas and yet her husband had been applying for Palestinian passports to return to Palestine. This produced the following response from the appellant in her statement of 8 February 2007.

> "I had explained during the interview that a new threat from Hamas was noted after I received the letter from the Palestinian Delegation Office. I have also explained how desperate my family and I were at this time, that our aim was to try to travel to Israel from Ben Guier Airport and (not) the West Bank. We believed that if we had explained our persecution to the Israeli authorities on arrival that we may (have) obtained permission from them to remain in Israel and not (be) sent to the West Bank."

20. I have set out this history in some detail because it seems to me that the critical point is whether the appellant wished to return to the West Bank at the time of the Home Office decision. The evidence shows that she did not. The application for a passport predates the later threat because it was on 17 November 2006 that the appellant's brother in law informed the family that both the appellant and her husband's names were on a wanted list and that they were being sought by Hamas.

21. In summary, the exploratory inquiry made of the Palestinian General Delegation in October 2006 was never pursued. Although the appellant told the Home Office in July 2004 that she did not have a national identity card it is unclear whether she was a Palestinian identity card holder and had left it in the West Bank or lost it and was thereby eligible for the special procedure. It is also unclear whether in the event that she was not a Palestinian identity card holder she could or would be issued with a Palestinian passport. Accordingly, the appellant has not, in my view, established a real possibility that the Israeli authorities will refuse her re-entry to the West Bank to which she, on her account, is in any event too terrified to go.

22. Mr Johnson submits that there is nothing in the facts of this case to take it outside the principle of *MA*, as enunciated by the Court of Appeal, that it is not persecution to refuse a stateless person re-entry to their country of former habitual residence. He points out the critical distinction is whether the returnee is returning voluntarily with the appropriate travel documents. If the appellant is minded to return, which she is not, she has produced no evidence to show whether or not she would be accompanied by the appropriate travel document. I accept Mr Johnson's submission that there is an

evidential vacuum about what will happen at the point of entry if the appellant is returned. That vacuum relates not only to the attitude and reaction of the Israeli authorities but also to the effect on the appellant. No evidence has been adduced as to the motivation of the Israeli authorities. In order for the Convention to bite there must be a fear of persecution for a Convention reason. The ratio of *MA* was that refusal of re-entry would not amount to persecution. I accept Mr Johnson's submission that there is an important distinction between discrimination and persecution.

23. There is no evidence of arbitrariness on the part of the Israeli authorities. Such information as there is suggests that it is those without travel documents who are prohibited from returning (see *AK v Secretary of State for the Home Department* [2006] EWCA Civ 1117 para 37).

24. *MA's* oldest sister returned to the West Bank from the United Kingdom. (See *MA* [2007] UKIAT 00017 para 13). She had to travel through the Jordanian border over the bridge and through many checkpoints. She had to wait many times but was eventually able to get through with an identity card.

25. This seems to me to be of some importance for it shows that she was not refused admission because she is a Palestinian. It points to the critical factor for acceptance or refusal of re-entry being possession of the relevant travel document.

26. In order to qualify as a refugee under the Convention the appellant has to demonstrate a well founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion and be unable or, owing to such fear unwilling, to return to the West Bank.

27. Mr Johnson forcibly makes the point that persecution is in a higher league than discrimination. It is difficult to see how a person can say he is being persecuted simply because he is prevented from doing something that he does not want to do. There is, it seems to me, a logical inconsistency between seeking asylum and not wanting to go back on the one hand, and on the other saying it is persecution not to be allowed to go back.

28. Leaving aside for a moment the decision in *MA* being determinative of this appeal, the following questions arise:

    i) Has the appellant a right to return to the West Bank?

    ii) Is she outside the West Bank, owning to a well founded fear of persecution for a Convention reason?

    iii) Does it make any difference if she wants to return to the West Bank?

Has the appellant a right to return to the West Bank?

29. At para 19 of my judgment in *MT* I referred to para 78 of the advisory opinion of the International Court of Justice (ICJ Reports 2004, p.136) from which I concluded the stateless Palestinians from the West Bank fall somewhere in between persons who have citizenship at one end of the spectrum and stateless habitual residents of a territory who have no rights at the other.

30. As in *MT*, reliance was placed on Article 12(4) of the International Covenant on Civil and Political Rights ("ICCPR") and the Human Rights Committee's conclusion that the phrase "his own country" in Article 12(4) was a broader concept than "country of nationality" and sufficiently wide to cover other categories of long term residents including, but not limited to, stateless persons arbitrarily deprived of their right to acquire the nationality of their country of residence.

31. Whilst I can see the force of the argument, like Lawrence Collins L.J in *MA* at para 50, I do not think it appropriate to express a view on an issue that does not require to be resolved by this court in the present case.

32. Mr Johnson submits that even if the appellant has a right to re-enter the West Bank, such right would not help her in the present case because she has not sought to avail herself of it. She has not sought to return voluntarily. The very fact that she would be forcibly removed rather then attempting to travel voluntarily demonstrates that she would not be seeking to exercise a right to re-enter. Further, she has eschewed "close and enduring connections" and "special ties" with the West Bank (see Maurice Kay L.J in *MA* at para 28).

Is the appellant outside the West Bank owing to a well founded fear of persecution for a Convention reason?

33. In order to qualify for refugee status the appellant must satisfy the definition of refugee in Article 1(A)(2) of the 1951 Convention:

> "A. For the purposes of the present Convention, the term "refugee" shall apply to any person who: ……(2)…….. owing to a 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…..is unable or, owning to such fear, is unwilling to return to it."

34. In *Revenko v Secretary of State for the Home Department* [2001] 1 QB 601 this court held that mere statelessness was insufficient to confer refugee status and that the need to show a fear of persecution applied just as much to those who did not have a nationality as to those who did. In *Adan v Secretary of State for the Home Department* [1999] 1 AC 293, 304 Lord Lloyd set out the four categories of person who would come within Article 1(A)(2) of the Convention. These included:

> "(3) Non-nationals who are outside the country of their former habitual residence owing to a well founded fear of persecution for a Convention reason and are unable to return to their country and
>
> (4) Non-nationals who are outside the country of their former habitual residence owing to a well founded fear of persecution and are unwilling to return to their country."

35. It is therefore incumbent on the appellant to show she is outside the West Bank owing to a well founded fear of persecution and for that reason is unable or unwilling to return. Although the test is the same for stateless persons as citizens it seems to me clear, as Wilson L.J pointed out in argument, that when you come to apply it the different circumstances between citizens and stateless persons may well be relevant and therefore produce a different outcome.

36. In order to establish refugee status the appellant must show not only a well founded fear of persecution but also that it is for a Convention reason. The Convention reason relied on by the appellant is race, namely that she is a Palestinian Arab, but the evidence does not establish that she will be or is likely to be refused re-entry for this reason. Additionally it must be shown that the conduct feared (i.e. refusal of re-entry) amounts to persecution.

37. Even if the evidence did establish she was likely to be refused re-entry because she is a Palestinian Arab there is no finding that refusal to permit re-entry would be discriminatory and in my view there can be no viable complaint that there is no such finding.

38. As to the point that the conduct feared must cross the threshold to amount to persecution, argument was developed by both sides on the meaning of para 5 of the Refugee or Persons in Need of International Protection (Qualification) Regulations 2006 (S.I 2006/2525) (" The 2006 Regulations"). This point was not explored in any depth in *MT*. Para 5 provides:

> "Acts of persecution
>
> (1) In deciding whether a person is a refugee an act of persecution must be;
>
> (a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms; or
>
> (b) an accumulation of various measures, including a violation of a human right which is sufficiently severe as to affect an individual in a similar manner as specified (a).
>
> (2) An act of persecution may, for example, take the form of:
>
> (a) an act of physical or mental violence, including an act of sexual violence;
>
> (b) a legal, administrative, police or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;
>
> (c) prosecution or punishment which is disproportionate or discriminatory;

(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

(e) prosecution or punishment to perform military service in a conflict, where performing military service would include crimes or acts falling under regulation 7.

(3) An act of persecution must be committed for at least one of the reasons in Article 1A of the Geneva Convention."

39. As this appears to provide a higher threshold for persecution than that previously envisaged by the authorities we invited counsel for both sides to provide written submissions as to its effect.

40. The background is Council Directive 2004/83/EC of 21 April 2004 ("the Directive"). It prescribes, amongst other things, minimum standards for the qualification and status of third country nationals or stateless persons as refugees. It is one of the steps towards a common European Asylum system. One of the main objectives of the Directive is to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection and it was considered necessary to introduce common criteria for recognising applicants for asylum as refugees (see recitals 6 and 17). Article 9(1)(a) of the Directive provides:

"Acts of persecution

(1) Acts of persecution within the meaning of Article 1A of the Geneva Convention must:

(a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention of Human Rights and Fundamental Freedoms."

41. Member States were required by 10 October 2006 to bring into force the legislative provisions necessary to comply with the Directive (see Article 38). Prior to transposition the Directive was of direct effect from 20 October 2004. The United Kingdom implemented the Directive through the 2006 Regulations which came into force on 9 October 2006 and applied to any immigration appeal that was not finally determined before that date.

42. The 2006 Regulations have not, as far as I am aware, been considered in any reported case although they have been applied in a number of AIT decisions. However, in *Sepet and Another v Secretary of State for the Home Department* [2003] 1 WLR 856, 868 at para 16 Lord Bingham of Cornhill referred to a draft Directive of the Council that eventually lead to the 2006 Regulations saying that the statement therein plainly afforded a narrower ground for claiming asylum than other statements to which the House had been referred.

43. Mr Johnson's submission is that the words *in particular* in para 5(1)(a) of the 2006 Regulations are used in a definitional sense to explain exhaustively the meaning of "basic human right." His argument can be summarised as follows:

i) The purpose of Article 9 of the Directive is to achieve consistency of approach between Member States to the definition of persecution;

ii) If the words *in particular* are intended to mean *for example* it leaves open the question what other rights are "basic human rights" within the meaning of Article 9 (1)(a). That would do little to achieve consistency of approach;

iii) A distinction is plainly intended between "basic human rights" in Article 9(1)(a) and (Human Rights) in Article 9(1)(b). Unless "basic human rights" correspond precisely to non-derogable rights under Article 15 of the ECHR not only is there the open question in (ii) above but there is also a blurring of distinction between "human rights" and "basic human rights";

iv) The words *in particular* in Article 9(1)(a) are to be contrasted with *inter alia* in Article 9(2). If *in particular* had been intended to mean *for example* then there would not have been any reason for this distinction. The phrase *inter alia* would have been used rather than *in particular*. Precisely the same point can be made about the use of the expression *in particular* in Regulation 5(1)(a) and *for example* in Regulation 5(2).

44. The alternative construction, which is supported by Jane McAdam in an article in the International Journal of Refugee Law [2005] 461 at 516 is that the words *in particular* are non exhaustive so that other basic human rights beyond those in Article 15 of the ECHR might be applicable. She argues that:

> "….provisions that incorporate the term *in particular* indicate that elements of the provision are not exhaustive, thus allowing Member States to take into account additional aspects in their national laws."

I cannot accept this for the reasons advanced by Mr Johnson.

45. Mr Johnson's submission seems to me to be entirely consistent with Lord Bingham's observation in para 16 of his speech in *Sepet* that the draft Directive afforded a narrower ground for claiming asylum than had hitherto been understood by some to be the case.

46. Mr Williams contends that whilst the language of the Directive and the 2006 Regulations narrow down the definition of persecution to non-derogable ECHR rights of which Article 3 of the ECHR is one, the scope of Article 3 is sufficiently wide to cover the type of ill treatment from which the appellant seeks protection. Article 3 of the ECHR provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

47. Mr Williams relies on *Cyprus v Turkey* (2002) 35 EHRR 30 as authority for the proposition that discrimination against a group of individuals may amount to degrading treatment within the meaning of Article 3. In that case the European Court of Justice concluded that Greek Cypriots living in the Karpas area of Northern Cyprus had been subjected to discriminatory treatment that had attained a level of severity that amounted to degrading treatment. The conditions under which they were condemned to live were debasing and violated the very notion of respect for human dignity of its members. The court having found breaches of Articles 8 and 9 also found a violation of Article 3.

48. Mr Williams also relies on *EB (Ethiopia) v Secretary of State for the Home Department* [2007] EWCA Civ 809 not only for the reasons advanced by Mr Fordham Q.C. in *MT* but also because denial of re-entry in that case qualified as persecution for a Convention reason namely *"EB's"* Eritrean race. The court in that case made direct reference to Article 9 of the Directive in the context of deprivation of nationality on the grounds of race and must therefore have regarded the deprivation of citizenship in that case as something that violated Article 3 of the ECHR. Therefore the finding of persecution in that case was entirely consistent with the definition of persecution in the Directive and Regulation 5 of the 2006 Regulations. However, it seems to me, the facts of *EB* were very different from those in the present case, the most material difference being that *EB* was concerned with denial of citizenship.

49. It is a question of fact whether the circumstances of an individual case are sufficiently serious, as envisaged by Regulation 5, to constitute a severe violation of a basic human right, in the present case that enshrined in Article 3. I think it is of note that not all violations of basic human rights are categorised as persecution within the meaning of Regulation 5; they must be *severe* violations. This to my mind is indicative that even though the infliction of discriminatory and degrading treatment may in some circumstances be classified as persecution, the mere denial without more of re-entry to a stateless Palestinian to the West Bank in the present case cannot.

Does it make any difference if the appellant wants to return to the West Bank?

50. At para 33 of his judgment in *MA*, with which both the other members of the court agreed, Maurice Kay L.J expressly did not decide the case on the basis that, following Hutchison L.J's proposition in *Adan v Secretary of State for the Home Department* [2006] 1 WLR 1107, it could not amount to persecution to deny *MA* entry because he was anxious at all costs not to return. He said he was content to assume there was something in the argument on the part of *MA* that there was no finding by the AIT that he would not wish to return to the West Bank if the alternative was not remaining in the United Kingdom but turning back into Jordan.

51. Accordingly, even were there a finding by the AIT that she positively wanted to re-enter the West Bank it would not avail her. The court would still be bound by the decision in *MA*.

Conclusion

52. In my judgment the appellant's appeal fails for the following reasons.

(1) The evidence establishes no more than that she is a stateless Palestinian from the West Bank who is likely to be refused re-entry if she does not have the relevant travel documents, as will be the case if she is forcibly returned.

(2) Denial of return to a stateless person to their country of former habitual residence does not of itself give rise to recognition as a refugee under the 1951 Geneva Convention. The authority for this, which is binding on the Court of Appeal, is *MA.* There is nothing to distinguish the present case from *MA.*

(3) Even if this court were not bound by *MA,* refusal to allow the appellant re-entry to the West Bank because she is a stateless Palestinian would not cross the persecution threshold required by para 5 of the 2006 Regulations.

I would accordingly dismiss the appeal.

Lord Justice Wilson:

53. I agree.

Lord Justice Wall:

54. I also agree.