

Heard at Field House

MA (Lebanon - Palestine - Fear -
Fatah - Relocation) Palestine
[2004] UKIAT 00112

On: 7 May 2004

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.....19th May 2004.....

Before:

His Honour Judge N Ainley (Vice President)
Miss K Eshun
Mr C P O'Brian

Between

Secretary of State for the Home Department

APPELLANT

and

RESPONDENT

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State from the determination of Mrs Turquet sitting as an Adjudicator on the 9th September 2003. The claimant is a Palestinian who was living in a refugee camp in Lebanon until he left for the United Kingdom. He arrived in the United Kingdom illegally on or about 21 April 2003 . He claimed asylum on 28 April 2003. The claimant was found by the Adjudicator to be a credible witness and there is no challenge in the grounds of appeal to the Adjudicator's findings of fact. The claimant said that he was born on 10 December 1986. That makes him now seventeen-and-a-half years old although he would have arrived in the United Kingdom when he was just sixteen.

2. He has lived throughout his life in the Ain Al Hilweh refugee camp in Lebanon. This is a camp which is largely controlled by the Fatah group loyal to Yasser Arafat.
3. In December 2002, round about his sixteenth birthday, Fatah members came to his parent's house to conscript him, as the eldest son of the family. Although he and his family have always wished to return to Palestine, neither he nor his family could be described as militants, and he certainly had no wish to fight for Fatah at all. He therefore refused.
4. Three days later they came back, this time armed with guns. He was driven to their base at Sabra. When they got there they again asked him to join, but he said he did not want to. He was then beaten up and kicked, he was threatened that his family would be killed and also threatened that he would be tortured with a soldering iron. It is no surprise at all that under this brutal level of coercion he agreed to join Fatah. He then began his training with that organisation.
5. After about a month he was taken to Ain Al Hilweh for five days leave and then was brought back for another month followed by a further five days leave. It appears he did three months of service and then, at the end of his third period of service he and a friend, with the assistance of an agent who had been procured by his father, left Lebanon via Syria and Turkey for the United Kingdom on 12 April 2003.
6. His asylum claim was refused by the Home Secretary and he appealed to the Adjudicator. In his appeal he stated that if he were to return home his life would be in danger because Fatah were known to execute those whom they considered to be traitors and who had fled abroad to avoid military service.
7. It is a great pity that the Adjudicator was not assisted by the Home Secretary in the conduct of the appeal before her. No CIPU Report was placed before her, indeed there was no representation by the Home Secretary at all. If there had been it is likely that some of the points that have arisen in this appeal would not have done.
8. The Adjudicator was referred to two cases of the Tribunal. The first was Nabil-el-Arid [2002] UKIAT 07474. This case concerned a Palestinian who had lived all his life in a refugee camp in the Lebanon and joined Fatah in 1997. The Adjudicator found there was a real risk that his desertion from Fatah would be discovered should he try and live in a different refugee camp and the consequences of that could amount to persecution at the hands of Fatah. The Secretary of State appealed that finding but did not take issue with any of the findings on persecution.

It appears therefore that that matter was conceded before the Tribunal but was never investigated.

8. Another case was cited, that of Nasser Thaer [2002] UKIAT 02725. In that determination, as well as the then current CIPU Report for April 2002, the Tribunal had before them a report from Mr Joffe which is briefly cited by the Adjudicator in the case before us. That report dealt with the difficulties that Palestinians would have in living outside the camps in Lebanon and enjoying Lebanese citizenship. That is not an issue that arises in the case before us today because it is conceded that unless one is a Palestinian with financial means or a particular professional qualification, it is difficult to live outside the camps and very difficult to obtain Lebanese citizenship, in the former case because one requires sufficient means to live outside the camps and acquire property in Lebanon, and in the latter because the Lebanese government is very reluctant to grant citizenship to Palestinians. Mr Joffe said in that report:

‘[the claimant] could not seek refuge elsewhere in Lebanon as he has no residence rights outside the refugee camps and would be subject to profound discrimination as a Palestinian, especially in Maronite areas.’

9. What Mr Joffe did not deal with is the issue that arises in this case, which is whether a Palestinian can relocate from one refugee camp to another, if the refugee camp in which he has lived hitherto is a place to which it would be unsafe for him to return.
10. On the material before her, the Adjudicator found that the claimant would be at risk of persecution within the camps and could not seek refuge elsewhere in Lebanon. At paragraph 28 of the determination she held:

‘As a Palestinian he has no right of residence outside the camp. It would not be reasonable to expect him to relocate to another camp, which in any event may well have Fatah members within it ... Having considered all the evidence including the background material, I am satisfied that the appellant would face a real risk of persecution on return.’

11. We have to say that with the benefit of the material that we now have, which the Adjudicator did not have, we find the cases of Nabil El Arid and Nassar Thaer of no real assistance in determining the point that is

raised in the grounds of appeal here. That point, as the argument developed before us, was essentially that even if he would be in difficulties in Ain Al Hilweh the claimant could relocate elsewhere in the camp system in Lebanon.

12. We have before us the CIPU Report for April 2004 on Lebanon. This deals in some detail with the position of Palestinian refugees in Lebanon. We will cite what we take to be the relevant passages:

‘6.25 Palestinian refugees in Lebanon are free to relocate from one camp to another, although their freedom of movement can be restricted. Also, their ability to move to another camp depends upon whether they can find appropriate accommodation. In the already overcrowded southern camps ... construction work is prohibited and there is little habitable space for newcomers. In Beirut, the north and the Beka’a, living space is more plentiful and rents tend to be less. There is also no obligation for Palestinians to live in any one of the twelve refugee camps; nearly half of all Palestinian refugees in Lebanon live outside the camps. Nevertheless, for many it is too expensive for them to leave the camps.

6.27 According to various reports, different refugee camps tend to be “controlled” by different political factions. Fatah, led by Yasser Arafat, is the main component of the Palestine Liberation Organisation (PLO). Fatah is currently believed to be in overall “control” of the largest refugee camp, Ain Al Hilweh, but various groups opposed to Fatah also have a present in Ain Al Hilweh, such as Asbat el Ansar. Fatah is also reported to be active in the camps in the south, around Tyre. However, there is said to be virtually no support for Arafat in the northern camps. A professor of political science, who specialises in Palestinian refugee studies, stated in correspondence with the Canadian Immigration Research Board dated 23 August 2002, that he considered the practice of forced recruitment in Palestinian refugee camps unlikely to occur. He said that individuals

could simply seek protection from one of the other factions or leave the camp if necessary.

2.30 With the exception of Ain Al Hilweh, the camps in the central and northern regions of Lebanon are currently "controlled" by pro Syrian/anti Arafat political organisations. However, the general political climate in the Middle East has become fluid since October 2000 and this could cause residents of the camps in Lebanon to switch their allegiance suddenly.'

13. Had these passages been placed before the Adjudicator it seems to us that she would have been driven to a conclusion different from the one to which she came as to whether the claimant could relocate in Lebanon. We take as a starting point that the material that was before her, which she accepted, shows that this claimant is someone who has been conscripted by Fatah in Ain Al Hilweh and might well be sought out by them again if he were to return to that camp. We are of the view that although conscription of the sort this claimant described may be rare, as it has happened to him in Ain Al Hilweh once there must be a real risk that it would happen again, or that he would be punished for desertion were he to return there. We consider, therefore, that there must be a real risk of persecution for him in that camp, and that we must assess the possibility of internal relocation within the Palestinian camp system in Lebanon.
14. It seems to us that this claimant could relocate. The camps in the north are camps where there is only a minimal presence of Arafat supporters and indeed the camps seem to be under the control of people who are antipathetic to Arafat. If he were to relocate to one of those camps we cannot see that there would be any real risk that he would be persecuted by Fatah or indeed by anyone else.
15. We further consider that it could not be said to be a cause of undue hardship to him that he would be required for his own safety to move to one of these camps, because in these camps there are not the gross conditions of overcrowding that there are in some camps in the south, and rents tend to be lower. Thus it would seem to us that there is no foundation for an undue hardship argument in this case.
16. It was submitted to us that because the claimant is a minor, he would be subjected to undue hardship. We note that the Adjudicator accepted tacitly, if not expressly, that he was the age he claimed to be. In those circumstances it is true to say that he is still a minor and will not attain his eighteenth birthday until December 2004 but he is not, looked at

realistically, someone who is so young that it would be improper for him to be returned, although we would expect the Home Secretary to adhere to his usual policy in respect of unaccompanied minors. The practicalities are that he is unlikely to be returned in the next few weeks in any event and his eighteenth birthday is soon going to be upon him. In any event, before he left Lebanon he had been in employment, selling vegetables. His family is still in Lebanon and, whether they remain in Ain Al Hilweh or choose to go with him to a northern camp, they will not be far from him and can provide moral support, if not financial support. These, however, are matters of speculation and we prefer to take the view that his age is not a factor that leads us to conclude that he would be at risk of being placed in a situation of undue hardship if he were to relocate to the north, because he is now seventeen and a half and he has been in the working environment already in Lebanon.

17. We were urged finally to remit this matter to the same or another Adjudicator so that the issue of internal flight could further be dealt with. We do not consider that that would be at all appropriate in this case. The issue of internal flight was before the Adjudicator and the claimant was represented by experienced counsel. There was a full opportunity for all the relevant points to be canvassed before the Adjudicator and we do not consider that the interests of justice require that this matter be remitted.
18. For the reasons which we have given, we consider that this appeal must be allowed.

**HIS HONOUR JUDGE N AINLEY
VICE PRESIDENT**