Asylum and Immigration Tribunal

MM and FH (Stateless Palestinians – KK, IH, HE reaffirmed) Lebanon [2008] UKAIT 00014

THE IMMIGRATION ACTS

Heard at Field House
On 29 June 2007

Before

Senior Immigration Judge Mather
Senior Immigration Judge Nichols
Mr J H Eames

Between

MM
FH

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Blum, Counsel, instructed by Knights Solicitors
For the Respondent: Miss E Laing, Counsel, instructed by The Treasury Solicitors.

i. The differential treatment of stateless Palestinians by the Lebanese authorities and the conditions in the camps does not reach the threshold to establish either persecution under the Geneva Convention, or serious harm under paragraph 339C of the Immigration Rules, or a breach of Articles 3 or 8 under the ECHR.

ii. The differential treatment of Palestinians by the Lebanese authorities is not by reason of race but arises from their statelessness.

iii. The decision in KK, IH, HE (Palestinians-Lebanon-camps) Jordan CG [2004] UKIAT 00293, is reaffirmed.

DETERMINATION AND REASONS

1. Both appellants in these appeals are stateless Palestinians from Lebanon. They both appealed on asylum and human rights grounds against a decision of the respondent to refuse to grant them asylum under paragraph 339 of HC 395. The appeals were both dismissed. The evidence of both appellants was found, for the most part, not to be credible. The sole issue in the appeals on which reconsideration has been ordered is whether or not the appellants as stateless Palestinians would suffer discrimination on return to Lebanon that would amount to persecution or breach their Article 3 or Article 8 rights under the European Convention on Human Rights ("the ECHR"). The Tribunal has already considered the issue in KK, IH, HE (Palestinians-Lebanon-camps) Jordan CG [2004] UKIAT 00293, and the purpose of this hearing was to consider whether the current evidence now establishes that Palestinians living in Lebanon face discriminatory conditions that do amount to a persecution and/or a breach of their Article 3 and Article 8 rights under the ECHR.

The Adjudicator's Findings in Respect of the First Appellant

2. The Adjudicator as he then was, Mr G.M. Petherbridge, heard the first appellant's appeal on 4 December 2003. The appellant was born on 24 April 1972 in El-Buss refugee camp, Tyre Province, Southern Lebanon. He went to primary school while living in that camp and completed his secondary school education in the Burj El-Shemali refugee camp. He studied biology at the Arab Beirut University in 1993 but did not complete his studies because he claimed that he decided to join the Palestinian Liberation Organisation (Fateh) in 1995. He claimed that he had undertaken military training at the Al-Rashidieh Refugee Camp and that he worked as a guard for the PLO. He claimed he was a follower of Sultan Abdul Aynian, the leader or a leading official of the Fateh group in southern Lebanon. Sultan Abdul Aynian was wanted by the Lebanese government on suspicion of the commission of criminal offences. The Lebanese authorities kept a checklist of followers of Sultan Abdul Aynian at the checkpoints outside the refugee camps and would arrest anyone with such an association if they decided to leave the camp. In June 1999 two of the appellant's friends, who were also members of the Fateh, were arrested trying to leave the camp and were never heard of again. The appellant, fearing that he would also be arrested, used an agent to get him out of southern Lebanon and claimed that the agent had facilitated his safe passage through a Lebanese checkpoint. The appellant travelled through Europe. He arrived in the UK on 17 December 1999 and he applied for asylum.

3. The Adjudicator accepted that the appellant was what he described as a first sergeant guard in Fateh, but rejected his evidence as to the reasons why he fled the refugee camp, finding he was not a credible witness and that he had not established any reasonable likelihood that he had been persecuted because of his membership of Fateh.

4. The Adjudicator was also asked to consider the appellant's claim that he would face discrimination and ill-treatment amounting to persecution and a breach of his human rights. In this regard he found:

> "50. A further strand to the appellant's claim is based upon whether the discrimination and ill-treatment of Palestinian refugees by the Lebanese authorities amounts to persecution.
>
> 51. In her submissions, Miss Sheikh has suggested that this persecution has been suffered by the appellant as part of a particular social group. It seems to me that if I were to find that the discrimination suffered by the Palestinian refuges amounted to persecution then accepting as I do that the appellant is a Palestinian refugee, his claim must succeed both under the Refugee Convention and Article 3 of the 1950 Convention.
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> 52. However, on the facts before me I do not consider that the appellant has been discriminated against to an extent that amounts to persecution.
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> 53. The appellant and his family have lived in the Palestinian refugee camp, certainly for the whole of the appellant's life. The appellant's family have two different houses in different refugee camps. The appellant himself was educated to a point where he was able to go to university. He chose not to pursue that because of his wish to join Fateh in one of the refugee camps. He had no problems with the authorities until 1998, which eventually I did not accept as being truthful. [A reference to the appellant's evidence that he had been stopped leaving Rashidieh camp in 1998]
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> 54. I have been referred to the Court of Appeal decision in [2003] EWCA Civ 649 Karyem.
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> 55. I cannot find on the evidence before me, that the appellant has shown that he has suffered differential treatment in relation to economic, social and cultural benefit as between Lebanese nationals and/non nationals or stateless persons.
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> 56. There is nothing in the appellant's evidence that supports any claim that he has been discriminated against other than very general assertions that Palestinian refuges had limited employment opportunities. The fact is that this appellant was employed, was paid for that work and supported within the refugee camp. At the same time he was able to travel backwards and forwards to his parent's house in another one of the refugee camps. He was educated and could have gone to Beirut University. His parents in fact had two houses in separate refugee camps.
>
> 57. None of this is predicated on the finding that the appellant had been discriminated against and therefore I would reject any claim on behalf of this appellant that he has been discriminated against to an extent that would amount to persecution as acknowledged by the 1951 Convention that would accord him refugee status. As I reject therefore the appellant's asylum claim for the reasons as set out above, so I would reject any claim under Article 3 of the 1950 Convention."

5. It was on these findings that the Tribunal, on the application of the appellant, ordered reconsideration because it was considered arguable that the Adjudicator's findings about the level of discrimination in Lebanon against Palestinians were not clear. We should just make one point at this stage. At paragraph 8 of Mr Blum's skeleton he makes reference to the Adjudicator's finding that the appellant's family had two homes and says:

There was no evidential basis for this conclusion (see paragraph 43 of the determination)

6. In fact the Adjudicator's finding was made as a result of oral evidence given by the appellant and is referred to in his in record of proceedings. The appellant was asked where his parents lived and he said Rashidieh camp. He confirmed that this was where he was employed as a guard with Fateh and he said that they had two houses, i.e. the family. The family had moved to Rashidieh camp after he left. The family had lived in Burj el-Shemali camp before that.

The Adjudicator's Findings In Respect of the Second Appellant

7. The second appellant was born on 16 June 1975 in Burj el-Shemali refugee camp in southern Lebanon. He lived there with his family, parents, three brothers and four sisters. He was educated to primary and high school level and then enrolled on a two year carpentry course at the Siblin Training Centre run by the United Nations. He graduated from the course there in 1993. He then worked for a French company in the Burj el-Shemali refugee camp called Du-Garif, where he was employed as a carpenter.

8. He claimed that he had been a political activist with Fateh since 1993. He said he had been the victim of targeting by other factions of the Fateh movement and that as a result of the problems he had fled Lebanon at the end of June 1998. He arrived in the UK on 5 July 1998 and immediately claimed asylum. The Adjudicator as he then was, Mr M.A. Khan, heard the appellant's appeal on 7 May 2004. He found the appellant was not a credible or consistent witness. He disbelieved his account that he had been a political activist with the Fateh movement. He failed, however, to make any finding on a submission made before him as to the discrimination likely to be suffered by the appellant on return to Lebanon. The appellant's representatives applied for permission to appeal as it then was on 15 September 2004, which was granted only on the discrimination point. The appeal comes before us now of course as a reconsideration.

Material Error of Law

9. There is no issue between the parties that both Adjudicators did make a material error of law, which was the first issue for the Tribunal to decide. In relation to the first appellant's appeal this was by the failure of the Adjudicator properly to address the issue of discrimination, and in relation to the second appellant's appeal, by the failure of the Adjudicator to deal with a material issue, namely discrimination, at all.

10. The first appellant had described in earlier statements a generalised antagonism from the Lebanese authorities against Palestinian refugees and that he feared discriminatory treatment by Lebanese forces on return. He had been forced to become a Fateh guard, which he claimed was one of the few options open to him as a consequence of the discrimination that he faced. He also said in interview that he was unable to continue with his university education as a result of the cost (paragraphs 8-10 of Mr Blum's skeleton).

11. The second appellant had complained about general discriminatory conditions faced by Palestinian refugees in Lebanon in his Statement of Evidence form and grounds of appeal and earlier statements (paragraphs 4 and 5 of Mr Blum's skeleton).

The Appellants' Statements before This Tribunal on the General Living Conditions for Palestinian Refugees in Lebanon

The First Appellant

12. The first appellant made a statement for the hearing before us dated 13 June 2007 (pages 1-7 of his supplementary bundle). He states that there has been a serious deterioration in the way in which Palestinians are regarded by the Lebanese authorities and the Lebanese people. The first appellant is in regular contact with his family, he speaks to them once a week. They have informed him there is no improvement in the day to day situation faced by camp residents and that security at Burj el-Shemali camp is very poor. No one feels safe. Conditions in the camp are also extremely poor: there is overcrowding and poverty is acute. UNRWA has reduced its assistance to Palestinian refuges. Education is limited and can only be accessed via UNRWA because Palestinian children have no right to state education in Lebanon. He describes children of ten carrying guns and being forced to work inside the camp because of poverty levels. He fears the same would happen to his daughter and that she will face a life without access to proper education, a health system and will have to live in severe poverty and overcrowding. He describes at paragraph 8 of his statement how the houses are built so closely together that the alleyways become sewage facilities. This is unhealthy and undesirable. Pollution is severe and there are no proper facilities to dispose of rubbish.

13. The appellant's wife is Polish. She met the appellant whilst she was working in the UK in 2004. They were married according to Islamic law on 12 December 2004 and have lived together in the UK since that date. The have one daughter who was born on 28 July 2005. The marriage and the daughter's birth were recognised by the Lebanese Sunni Marital Court on 31 August 2005. A marriage certificate was issued by the Ministry of Interior on 15 September 2005. The appellant and his wife have been refused permission to register the marriage in the UK. The first appellant did not think his wife would be able to adjust to living conditions in the camp in southern Lebanon. There are difficulties over the supply of electricity. The Lebanese authorities restrict fresh drinking water and there are water shortages. His wife is Catholic and he feared that she would not be readily accepted either by his family or the community.

14. The first appellant stated that his employment opportunities would be extremely restricted because he is Palestinian. He would require a work permit even to work as a basic labourer and would not be paid the same as other non-nationals. He states that this discrimination exists because of the prejudice against Palestinians. Most Palestinians also face discrimination because of their Sunni religious background, whereas the majority of the country in southern Lebanon is Shia. He would face

humiliation in terms of his ability to exercise freedom of movement, for example the unnecessary imposition of waiting times to gain entry to camps was specifically directed against Palestinians. He would feel like a prisoner within the refugee camp given the Lebanese authorities' attitude to those living in the camps.

15. The first appellant said that he had received training as a hairdresser from a friend in the UK. He would be unable to follow this chosen profession in Lebanon because he would need a licence from the local council and the procedure was lengthy, and he believed that ultimately a licence would not be granted to a Palestinian. He would therefore be denied the right to put his employment skills into practice. Any work that he did obtain would be tainted because of discriminatory terms and conditions he would be subjected to because of his Palestinian origin.

16. We have also read and considered a statement made by the appellant's wife dated 11 June 2007 at pages 14 – 24 of the supplementary bundle produced for this appellant. On 28 March 2007 she visited Burj el-Shemali camp where she stayed until 14 April 2007. The purpose of the visit was to meet her husband's family. She met with her husband's parents, four sisters and three brothers, who are still living at the camp together with other relatives. She noted the conditions in the camp were extremely poor. The houses were built extremely close together and there was little lighting and a lack of basic facilities such as heating and electricity. She noted the frequent power cuts. Hygiene in the camp was very poor. Living conditions were extremely cramped, including that of her husband's family. She realised she could not live in the camp. Permission had to be obtained for her to leave the military checkpoint and was refused on one occasion when she needed to visit a pharmacy to buy nappies for her daughter. She was worried that the environment would be completely unsafe for a young child. She witnessed violence. The streets are not lit at night and therefore people remain indoors. Water has to be boiled before it is used. There are difficulties storing fresh food, indeed fresh milk because of the frequent electricity cuts. She feared that she would not be able to practice her religion, or that it would be difficult for her to do so in Lebanon. She would be viewed as an outsider and a stranger because of her faith. She refused to comply with a request by her husband's family to wear a hijab, and this caused upset. She could not envisage any circumstances where it would be possible for her to adjust to life inside such a camp, and that as a person who had been brought up in a European country her life would be unbearable living in Lebanon for any longer than the visit that she had endured.

17. We make it clear that there were no submissions made to us that the appellant's Article 8 appeal encompassed a real risk of a violation of his right to family life on the basis that it was not reasonable to expect family life to continue in Lebanon.

Statement of the Second Appellant

18. The second appellant made a statement dated 18 June 2007 dealing with the conditions as he knows them inside the Burj el-Shemali camp. He has been in regular contact with his family since he came to the UK and telephones them every month.

There is no improvement in their lives. He also talks of a lack of proper water and electricity. He mentions that the houses are built extremely close together and there are inadequate waste disposal facilities, resulting in extreme pollution. There is a lack of proper medical facilities in the camps since UNRWA have reduced their assistance. Palestinians are denied medical treatment as well as access to social assistance. He states that his profession i.e. a skilled carpenter and kitchen fitter and furniture designer is prohibited to Palestinians in Lebanon. Palestinians are not allowed to own businesses or property, and receive no protection if they work for a Lebanese person.

19. The second appellant also gives details of the strong opposition to the Palestinian people from the Lebanese nationals because of the troubles over the years and the blame placed at the feet of the Palestinians for those troubles.

The Expert Evidence

Report of Abbas Shiblak dated 27 June 2007

20. We should state at the outset in relation to the evidence of Mr Shiblak that the Tribunal received a copy of an e-mail from the appellant's representatives, Knights Solicitors, and a covering letter of 2 July 2007, i.e. after the hearing of this appeal, as confirmation that Mr Shiblak had been made aware of the Tribunal's decision in KK before the preparation of his report. The e-mail confirms that Mr Shiblak was asked to consider where there had been any diminishment of Palestinian rights since KK was promulgated in October 2004, and whether the situation had got significantly worse since that date. We mention it because the issue was raised with Mr Shiblak by Miss Laing at the hearing, and the decision is our starting point for the determination of the issues in this appeal, for the reasons that we set out later.

21. Mr Shiblak is a Research Associate at the University of Oxford Refugee Studies Centre. He is a principal researcher on areas specialising on refugees from the Middle East, and the issue of statelessness in the Arab region. He sets out his background and qualifications at section 7 of the report. We do not intend to repeat what he has said there save to note that his last two visits to Lebanon were in June 2006 and April 2007 when he spent about three weeks there during each of the trips, and that he visited a number of refugee camps including Burj el-Shemali. He met with UNRWA officials; the Lebanese ambassador in charge of Palestinian affairs; the PLO representative in Lebanon; representatives of NGOs working with the refugees and the representative of the UNHCR in the Middle East. We have read his report and where relevant we have referred to its content.

22. We heard oral evidence from Mr Shiblak. He confirmed that he had reread his report that morning and he adopted it. He confirmed his visits to Lebanon; the first had been two weeks before the war erupted in 2006.

23. He was asked about paragraph 2(c) of the report. This states as follows:

"(c) Despite the fact that Palestinian refugees were living in the country for three generations since 1948, the Lebanese authorities deny Palestinians refugees residency rights and consider them foreign citizens who could have been in Lebanon for a few days. In many aspects, Palestinian refugees are in fact worse off. Foreigners for instance are allowed to own property in Lebanon but such a right is denied for the Palestinians. Lebanon also denies social security for Palestinian refugees under the pretext that these rights are offered to citizens of other states on a reciprocity basis. Lebanon has such reciprocal arrangements with at least two Arab states, Syria and Egypt that put the workers of these countries in a better position than the Palestinian refugees in terms of access to the job market, the number of issued work permits and social security benefits. Available statistics suggest that in 1991, the Ministry of Labour issued about 18,000 work permits to Egyptian workers, but only 350 permits to Palestinians. The majority of Palestinian workers are required to pay fees of US$830 to apply for such permits or renew, which in most cases the Lebanese authorities refuses to issue. In April 2007, I visited Beirut and met a group of Egyptian agricultural, construction and building maintenance workers at the airport. In the course of my conversation with them I was informed that they received health, medical and social benefits as part of a Memorandum of Understanding between Egypt and Lebanon."

24. Mr Shiblak was not sure, when questioned, what other states also had the same reciprocal agreement with Lebanon. He thought the Gulf States were amongst those countries because they had a mutual interest in terms of investment, transfer of trade and personnel. He said part of the agreements did relate to the professions. It was not only related to manual labour. He was asked what overriding justification was given by the Lebanese authorities for the exclusion or restriction of Palestinians in terms of employment, ownership of property and social security. He said it was based on a political formula in Lebanon which had been devised because of the sensitive sectarian division. The formula was made in 1923 and again in 1946 when Lebanon got independence, and it relates to a balance between the religious groups in Lebanon which the authority does not want to upset, and the Lebanese authorities think that the integration of Palestinians would upset this formula as they are mainly Sunni. He said that most discrimination against Palestinians is motivated by the need to reduce or minimise or get rid of the Palestinian refugee element. In this regard he referred us to paragraph 2(b) of his report in which he described what is meant by the favourite slogan of Lebanese politicians: "No to Tawteen". This he said meant no permanent settlement or implementation or colonisation of Palestinians within Lebanon. All Lebanese political groups were agreed on this. The policy was to push Palestinians out of Lebanon, by imposing restrictions on them. At paragraph 2(g) Mr Shiblak referred to an infamous remark made by a renowned Lebanese poet. He had demanded at the beginning of the civil war that the Palestinians of Lebanon be distributed between the Arab states in numbers proportionate to the population of the states. When he was asked what proportion Lebanon should take he had replied:

"Those we have killed are sufficient".

Mr Shiblak had said that this summarised the attitude of the Lebanese establishment.

25. He was asked about the impact of the Syrian withdrawal from Lebanon on Palestinians living there. He said there was a security vacuum created which all the different groups competed to fill. During the Syrian era the Lebanese establishment was no more than an extension to the Syrian presence, and the camps became an open ground for groups to compete to control them. Extremist Islamic groups had found a foothold in the camps backed by Sunni fundamentalists. The Palestinians living in the camps were affected by this conflict more than any other category of resident. Two-thirds of the innocent civilian victims were Palestinians living in the camps. The Syrians used groups by proxy in the camps to destabilise Lebanon. This caused the Lebanese authorities to impose a strict siege on the camps. In the Burj el-Shemali camp it was besieged on all sides. There was only one gate where the people had to queue to get in and out. The Lebanese authorities were trying to make sure they knew what was going on in the camps by imposing the siege and at the checkpoints, and as a result ordinary Palestinians suffered. He described how in the Palestinian controlled areas women had to give birth at the checkpoints and he was aware of a lady who had passed away while waiting in a long queue. Lebanese intelligence was actually trying to recruit informers in the camps. All the groups were active in securing intelligence in the camps, including Hezbollah and the Syrian army.

26. Mr Shiblak was referred to paragraph 2(d) of his report which states:

> "One of the most damaging constraints on Palestinians in Lebanon is that which excludes refugees from the professions and a wide range of skilled and semi-skilled work, as well as public sector employment, making it almost impossible for them to work in the private sector either. Those who work in the private sector have to do so, in most cases, under black-market conditions. They have no pension or social benefits. The now resigned Labour Minister, Hamadeh Trad, issued a memorandum in June 2005 trying to legalise menial labour for Palestinians. His measures were [sic] not been implemented because of political and bureaucratic reasons and the lack of cooperation by the private sector which is characterised by anti-Palestinian racial attitudes. Since June 2005, there has been no successor to Mr Trad. However the government has not implemented any changes in favour of basic employment rights for Palestinians. This is based upon my regular research and close supervision of the Lebanese political scene."

27. Mr Shiblak said that the Minister Trad, who represented Hezbollah, had issued a ministerial decree in 2005 taking off from the list of professions prohibited to Palestinians, jobs which are mainly clerical and manual professions. This is an annual ritual for Labour ministers since 1962 when they had the power to decide what jobs foreigners could do in the country. The decision (of Labour Minister Trad) had had in practice no impact whatsoever because of bureaucratic and political manoeuvring. Minister Trad was amongst the five who had resigned from the present government and was not in office any more. There had been hope from the Palestinian side for change but it did not materialise.

Cross-examination by Miss Laing

28. Miss Laing asked Mr Shiblak whether he had a natural sympathy for Palestinians and he said that he thought anyone who saw an individual as a human being should be concerned. He said however he was no more sympathetic to Palestinians than he was to Kurds or the Bidoon. He was sympathetic to any group that was denied basic human rights. Objectively his duty was to the court and was not based on his personal opinion. She suggested that his sympathy had led him to adopt a position of an advocate for the Palestinian cause. He disagreed and said that he should not be labelled. He was referred to section 5(c) of his report. He deals with the position in relation to the first appellant in this section of the report. He was asked whether his views did not show a particular empathy with the first appellant's personal situation and that was he not attempting to persuade the Tribunal to do the same. He said that any observer who closely watched the Palestinians in Lebanon would say the same.

29. He was then asked about his comments in the report he had prepared on the second appellant, page 18 of the report paragraph 8(h), where Mr Shiblak states:

> "(h) The present Lebanese government of PM Fauad Siniora took some steps in the last few years to improve the Palestinians' conditions so as to steer them away from being used as a political card by the Syrian government. The Lebanese government issued a pardon to the Fateh representative, Sultan Abu-Al-Ayneen, who was sentenced to death during the Syrian era of domination. The Lebanese government agreed to reopen the PLO office in Beirut in early 2006. The government partially removed its long standing restriction of not permitting any construction work to improve the infrastructure within the camps, mainly in Ein El-Hilweh camp."

30. Miss Laing asked Mr Shiblak whether it was not correct that the removal of Syrian influence had had a positive effect on Palestinians. He replied that he could not link it with the removal of Syrians, but with the present situation where there was open conflict between Syrians and the Lebanese government. It was a gesture by the Lebanese to try and do something in the context of competing with the Syrian intelligence who were recruiting in the camps for their own agenda. He described how he had met with Ambassador Makkawi of the Lebanese Prime Minster's office who had spoken to him about some positive ideas, including allowing material for construction in camps. He met him again in Beirut in his office and he said there were difficulties in implementing these polices because of the polarisation of the Lebanese government. Miss Laing asked Mr Shiblak if he would nevertheless agree that there was a focus for goodwill at work in the Lebanese government. He did agree, but said that the Lebanese government was motivated by the conflict with Syria. The sentence of the Fateh leader was a political trial and was not legal. Lebanon at the time was under Syrian influence. The Lebanese government were trying to revoke this, and make good their relationship with the main Palestinian group Fateh. But so far as many Palestinians were concerned, including the activists around the sheik and those in his clan, he could not protect them.

31. Miss Laing referred Mr Shiblak to the report of Jim Quilty at pages 20 – 38 of the appellant's authorities' bundle and to the section headed: "Changes in Lebanon's Legal and Market Landscapes February 2005", where he refers to:

"The political reformulation that followed the Syrian army withdrawal"

She asked Mr Shiblak whether that caused him to reconsider his view that the political changes were not to do with the Syrian withdrawal. He replied that everything had a political agenda in Lebanon. However whether in reality the Syrian withdrawal had an impact was questionable, there was no real change.

32. Referring to the Minister Hamadeh Trad, Miss Laing asked Mr Shiblak for his views on what Mr Quilty had said as follows:

> "More than anything else" says Suheil El-Nator "Mohammed's Memorandum was a political move, designed to say 'We want to deal with Palestinians differently than we have up to now'. This inspired polemics on both sides of the Lebanese political divide [because] the memorandum implicitly recognised the misery of the Palestinians here and acknowledged the need to so something about it. This is important."

33. Mr Shiblak said that he did not dispute the intention but the question was what it meant in practice. He knew Souheil El-Nator, and questioned whether he could speak for the whole government. He was referred to the report of Souheil El-Nator entitled: "Human Rights Dilemma of the Palestinian Refugees in Lebanon" at pages 1-19 of the appellant's bundle of objective evidence. At page 11 of the report he stated:

> "Practically, a broad segment if [sic] Palestinian workers are employed in daily agricultural work, construction, travelling sales, mechanical work, repair and workshops, and as beauticians. Another segment works in a number of occupations, such as teachers in private schools, and in rare cases as secretaries and computer operators in companies and offices. Finally, a third segment of the Palestinian population – mostly women – is employed to provide services in private homes and associations."

Mr Shiblak said he could not see why this was not accurate.

34. Miss Laing referred Mr Shiblak to Mr Quilty's comments on the requirement of Palestinians to purchase work permits to work legally in Lebanon. Quoting from Mr El-Nator, Mr Quilty states:

> "Nator acknowledges that the new permit regime – which makes the paperwork more affordable and ties permits to the calendar year rather than to individual jobs – is somewhat more reasonable than the previous one. The whole regime, however, places obstacles in the way of the Palestinians finding work, and provides opportunities for Lebanese employers to deny it to them."

35. She asked Mr Shiblak whether he accepted that the current work permit regime was more reasonable than the previous one. Mr Shiblak replied that it was not more reasonable because it had never been implemented. He was asked whether the number of jobs from which Palestinians were excluded included the job of a hairdresser. He said that if that was among the list of jobs removed that it would still require a work permit, which was not easy to acquire. An individual would have to pay a $30 fee no matter what the outcome. In 1999 Egyptians had 18,000 work

permits in Lebanon, Palestinians had 300. Miss Laing asked whether or not the reality was that a number of Palestinians worked in an unregulated way, in the black market economy. Mr Shiblak replied that this was correct but they were obliged to do so and had no protection. It was put to him that many people in the UK did this. He replied that it was the lucky ones in Lebanon who were working in the black market conditions.

36. Miss Laing asked Mr Shiblak whether he agreed that the Lebanese economy was not good, particularly because of the war. He said that since two years ago the Lebanese authorities had been cracking down on companies using illegal workers i.e. working without a work permit. The war was affecting everybody. The discrimination against Palestinians was not linked to the general conditions of the economy. Miss Laing asked him whether he agreed with Mr Quilty that the situation as to the enforcement of the law was not consistent. He said it was not consistent when it came to Palestinians. At page 5 of the report Mr Quilty said:

> "Lebanese commerce, as has been noted by many local political analysts, has many excellent laws but their enforcement ranges from selective to arbitrary. The same is true of inhumane laws like the ones that governed its refugee community."

37. Miss Laing said the first point was whether or not Mr Shiblak agreed that the Lebanese government enforced laws selectively or arbitrarily. He replied it depended who you are. Miss Laing said the second point was whether the same applied to inhumane laws, i.e. that enforcement was selective. Mr Shiblak said that it could be.

38. Turning to the issue of education, Miss Laing referred Mr Shiblak to the curriculum vitae of Dr Mahmoud El-Ali, a Palestinian independent researcher whose report appears at pages 20 -22 of the objective bundle. At (iv) Dr El-Ali gives details of his formal training and education and records at paragraph 1 that he attended the Siblin training centre, which is a UNRWA establishment where he gained a teaching diploma and gradated in 1971. Mr Shiblak agreed that anyone who had studied at the Siblin training centre would have to be a registered refugee with UNRWA, although not necessarily that he came from one of the camps. He also agreed that he must have acquired Lebanese nationality and that he had an impressive education. He said he must have been amongst the lucky ones that got Lebanese nationality. He noted that he was an inhabitant of one of the seven villages annexed to the mandatory areas of Palestine. He would have got nationality in accordance with the 1994 law. He was also a senior member of the staff in UNRWA, and had an income that enabled him to be educated.

39. Miss Laing asked Mr Shiblak if there were about 30,000 refugees that had been naturalised. He replied that this was the majority of inhabitants of the seven villages he had mentioned, although there was controversy regarding the number, it was estimated to be 3-4,000. Mr El-Ali was an inhabitant of one of the seven villages.

40. Miss Laing then turned to the reciprocal agreement between Lebanon and other countries to which Mr Shiblak had referred in his report. He said that the benefits and details of these agreements varied. However, there were agreements with Egypt, Syria and the Gulf States. Miss Laing put it to Mr Shiblak that he had mentioned that Lebanon and the Gulf States had a mutual interest in trade and asked him whether he accepted that a state was entitled to enter into a reciprocal agreement if it was in the interest of the state to do so. Mr Shiblak replied yes, of course he did. However in the case of Palestinians it was different. They were not a citizen of any other state, they had no state, they had been in Lebanon for sixty-seven years and that gave them some rights, although not necessarily rights that other citizens had. Miss Laing continued that it followed from the difference that stateless Palestinians and nationals of other states were not in the same position. She asked Mr Shiblak whether he accepted that stateless Palestinians resident in Lebanon were in a different position to other foreign nationals. He replied that other foreign nationals were in a more favourable position. He agreed that according to international law, a stateless Palestinian was in a materially different position from a national of a different country, however made it clear that he did not believe that Palestinians should be in this position.

41. Turning to the Tribunal's decision in KK, Miss Laing asked Mr Shiblak what impact this had on his opinion and conclusion. He said he had only read the case two days ago. He had prepared two reports, one on 18 June and one on 27 June. He was not aware of the content of KK when he wrote the first report. He had mentioned it at page 5 paragraph (h) of his report on the first appellant, where he states:

> "Since the 'KK' decision which I have considered, it is important to note that the condition faced by Palestinian refugees since the date of that decision has significantly declined because the discriminatory measures have not receded, the living conditions remain extremely poor and matters are exacerbated because of the declining security in the camps. UNRWA's services are declining in terms of resources and in terms service delivery."

42. Mr Shiblak said that was not enough, but thought the security situation was getting worse as was the situation regarding property ownership for Palestinian refugees. It was put to him that the situation regarding property ownership was the same as at the time the Tribunal decided the case of KK, as were living conditions and job opportunities. Mr Shiblak then accepted that the only difference now was the security situation, and added that he had glanced through the KK decision.

43. Miss Laing suggested that the situation had changed for the better because Syrians had influence on the direction of the Lebanese. Mr Shiblak disagreed and said that although they were gone, they were there invisibly. She put it to him that nevertheless whilst the Syrians had been present there was a large number of Syrian workers in Lebanon who had now gone. He said he thought that in the first instance after the withdrawal that might have been the case, but there were still thousands of Syrian workers in the market. She suggested there was less competition. He said there was still competition for Palestinians because there were other foreign labourers. She put it to him that there had been a relaxation on building restrictions

in the camps. Mr Shiblak disagreed and said there an intention to relax the restrictions but it had not happened in practice. He had observed Shamali during his last visit. A third of the camp had been destroyed in 1982 and that destruction was still present and there was further destruction last summer. There had been no real change. He could see no important change on the ground.

Re-examination by Mr Blum

44. Mr Blum asked Mr Shiblak what was the main motivation of the Lebanese government in not according the same rights to Palestinian refugees as nationals of the state. Mr Shiblak replied that the main objective was deeper than the daily politics of Lebanon, it was the political formula to which he had referred earlier and that was an open and known fact. Mr Blum asked him how carefully he had read KK. He said he had paid particular attention to the refusal and the Home Office explanation and that had attracted most of his attention. However he said that he had read the whole of the decision of KK.

Submissions on Behalf of the Respondent

45. Miss Laing relied on her skeleton dated 28 June 2007. In her submissions she said that the main question for the Tribunal was whether or not the position had changed materially since the decision in KK, and we consider that decision later. She reminded us that in KK the Tribunal found the general conditions for Palestinians living in Lebanon did not amount to persecution as defined in the Refugee Convention nor did they amount to a breach of Article 3 of the ECHR. She submitted that, if anything, since then the conditions had slightly improved and therefore could not amount to persecution or cross the Article 3 threshold. She said that she used Article 3 as shorthand to include humanitarian protection.

46. She reminded us of the definition of a refugee for the purposes of the Refugee Convention which we do not intend to repeat here. She also referred us to Professor Hathaway's definition of persecution as:

> "… the sustained or systemic failure of state protection in relation to one of the core entitlements which has been recognised by the international community. The types of harm to be protected against include the breach of any right within the first category, a discriminatory or non-emergency abrogation of a right within the second, or a failure to implement a right within the third category which is either discriminatory or not grounded in an absolute lack of resources."

47. This refers to Professor Hathaway's formulation of a hierarchy of human rights according to their relative importance. In this case the Tribunal was concerned with categories 2 and 3 as identified by Professor Hathaway. The parties were agreed that the factors relied on are freedom from arbitrary arrest and detention; freedom of movement; and opportunities or rights connected with education, employment, shelter, healthcare, owning property, access to social security and legal aid, and the right to establish institutions.

48. She said it was the Secretary of State's submission as follows:

> "(a) The evidence demonstrates that the appellants have no well-founded reason to fear arbitrary arrest or detention, or that their freedom of moment will be restricted. Nor does the evidence demonstrate, save to a very limited degree, that they have been unable to access economic, social and cultural rights.
>
> (b) Differential treatment between nationals and non-nationals in relation to access to economic, social and cultural rights cannot amount to discrimination in the sense necessary to establish persecution, and the same principle applies to the treatment of stateless persons: an individual cannot establish by such generalised evidence of differential treatment that he is persecuted in his country of habitual residence.
>
> (c) In any event, curtailment of such rights or discriminatory denial of access to benefits can only amount to persecution if there is no justification, and the measures involved – persistent and serious ill-treatment – are of a substantially prejudicial nature and effect a significant parts of an individual's existence so that it would make his life intolerable if he were to return: the appellant must be able to point to something which has an exceptional impact on him personally.
>
> (d) For these reasons, the Article 3 threshold is not crossed (and neither is there any entitlement to humanitarian protection)."

49. Miss Laing then turned to deal with the issue of differential treatment and justification. She submitted that the differential treatment of nationals in relation to access to economic, social and cultural benefits does not amount to persecution. Firstly, as a matter of international law it is for the host country to regulate access to and residence of aliens. This would include an alien's right to employment, education, housing and other economic, social and cultural benefits. She submitted that the restrictions placed on aliens and exercise of this sovereign power cannot be justified as discrimination because the comparators are not in analogous positions. In any event, access to these benefits is dependent on the resource available in the host state. The state must be free to provide for its own citizens first, before it provides for aliens. The objective evidence suggests that Lebanon has high levels of international debt and the standard of living of its own nationals is not high. She submitted that nationals and non-nationals or aliens are not in a comparable situation for the purposes of any discrimination analysis, and this also provided a justification if one was needed for any differential treatment that might be identified. She submitted that the evidence which is before the Tribunal did establish that any difficulty that the appellants might experience as aliens was justified by a lack of resources. In addition those rights were denied on the basis of lack of reciprocal arrangements with another state.

50. She submitted that the principle is recognised in international and domestic law. She quoted Article 2(3) of the International Covenant on Economic and Social and Cultural Rights (ICESC) which provides that:

> "The relevant countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present covenant to non-nationals."

51. Article 1(2) of the International Covenant on the Elimination of all Forms of Racial Discrimination (ICERD) provides:

> "This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a state party to this Convention between citizens and non-citizens."

52. She relied on a number of domestic examples which illustrate the respondent's point that aliens do not have equal rights with citizens. For example in the UK, EEA nationals of new Accession States who do not have a work permit are not permitted to work without the authorisation of the Secretary of State. Asylum support is below the level available to British nationals and others who are entitled to claim income support, and asylum seekers in the UK do not enjoy full freedom of movement and are subject to conditions about their place of residence.

53. Miss Laing then turned to deal with the general position of Palestinians in the Lebanon. She relied on the findings of the Tribunal in KK, particularly at paragraphs 81 to 92 which we consider later. In KK the Tribunal had noted the delicate political balance in Lebanon and the difficulties which had been caused when Lebanon accepted a large number of stateless people in 1948 and 1949. The refugees had been accepted on the basis that they would be supported and provided with facilities by UNRWA which was responsible for their material needs. The Tribunal said at paragraph 101 of KK:

> "… bearing in mind the delicate political balance in Lebanon, the Lebanese authorities are entitled to take account of the political impact upon their society of one-tenth of the population suddenly being granted citizenship and thereby enfranchised."

54. The Tribunal did not consider that the Lebanese authorities' concern that the Palestinians should be able to return to their home areas was an illegitimate one. Miss Laing reminded us that Mr Shiblak had placed considerable weight on the political balance, as the reason for the discriminatory practice as he saw it. She submitted there was no change in the position in the evidence before the Tribunal today.

55. The Tribunal had also held in KK that the specific history of a particular appellant should be taken into account in assessing the general situation and the degree of likelihood that what he will experience on return to Lebanon would be persecutory, or in breach of his human rights. She submitted that the position for Palestinians in Lebanon remained the same as the Tribunal in KK had considered. She referred again to the quote by Jim Quilty at page 5 paragraph 2 of his report that the enforcement of Lebanese law ranges from the selective to the arbitrary and the same is true of inhumane laws like the ones that govern the refugee community. She mentioned the drop in UNRWA's spending because of dwindling foreign donations at paragraph 12(b) of her skeleton. Importantly, she relied on the fact that Lebanon has consistently refuse to adopt the Refugee Convention or the Statelessness Convention. Miss Laing submitted that that was a conscious and deliberate decision by the Lebanese authority not to bind itself. Further, UNRWA's role is to provide for

Palestine refugees in the camps what the Lebanese state does not, and this includes housing, healthcare, education and welfare support. Miss Laing submitted that the "three pillars of Palestinian activism in Lebanon" were the provision of civic rights to refugees, resisting naturalisation, locally referred to as "implantation" (the Tawteen described by Mr Shiblak), and upholding the right of return to their homeland/natal villages. She referred us to the COIS at paragraph 6.105, which quotes the writer Are Knudsen from his 2003 work "Islamism in the Diaspora: Palestinian refugees in the Lebanon 2003". He refers to the three pillars of Palestinian political activism as above and states:

> "These claims may at first not seem contradictory. The refugees demand 'civic rights', that is the right to live and work in Lebanon, but do not seek citizenship (which, inter alia, includes the right to vote). This is because naturalisation would compromise the right of return and symbolically erase the Palestinian refugee community, as well as being construed as a victory for the Israeli authorities, who categorically reject the refugees 'right of return'. Upholding the right of return is therefore a highly charged symbolic issue, especially for the older generation, and bridges past wrong doings (forced exodus) the future redemption (returning to Palestine). Nonetheless, a large number of Palestinians have been naturalised in recent years. Since 1994 decrees by the Lebanese authorities have naturalised about 30,000 Palestinians, the majority of them from the former security zone to the south of the country (Peteet 1996: page P29)"

56. Dealing with the issue of freedom from arbitrary arrest or detention, Miss Laing submitted that neither appellant had been the subject of arbitrary arrest or detention. The second appellant did not refer to it at all. The first appellant, although he claimed to fear arrest and detention, was found not to be credible. His fear was linked to the desire of the Lebanese government to arrest Sultan Abdul Aynian; however he has now been issued with a pardon. She referred to the findings of the Tribunal in KK at paragraph 94, where they found that there was no evidence that Palestinians were exposed to a risk of arbitrary arrest. She also referred us to the background material which, although it confirms the risk of arbitrary arrest, applies equally to Palestinians, Lebanese citizens and other non-nationals. She submitted that there is no evidence that Palestinians are routinely targeted and any such detention and questioning is justified by the notoriously unstable security situation in the country.

57. Dealing with freedom of movement, Miss Laing said that the evidence in the first appellant's case supported a conclusion that he had had no problems moving from one camp to another, or to Beirut. The Adjudicator found that his family had two houses in two different refugee camps, and he was able to travel to and fro between those camps. We have already indicated how the Adjudicator came to that conclusion on the first appellant's oral evidence. The second appellant had also moved camps without difficulty and was found by the Adjudicator to be able to move camp. Neither appellant had any difficulty travelling to Beirut to leave Lebanon. She pointed out that two recent Guardian articles which had been served with Mr Shiblak's report, referred to two individuals, one of whom, a Palestinian woman and a left-wing activist born in Ein El-Hilweh but who lived outside the camp and also spent time back in the camp, and to a young Palestinian whose reason for not leaving the camp was because he felt like a fish out of water and did not like the way the Lebanese soldiers looked at him when he did so. The article refers to the

practical difficulties for Palestinians to leave camps, especially after the violent incident of Nahr Al-Bared, which was a battle between a Jihadi group, Fatah Al-Islam and the Lebanese army. The article referred to other clashes of similar nature. Miss Laing submitted that it was scarcely surprising that in these circumstances the Lebanese army was inclined to carefully check who was coming and going from the camps.

58. She referred particularly to the evidence of Mr Quilty who states at page 8 paragraph 1 of his report that:

> "Camp residents are generally free to leave whenever they please"

59. His report suggests that freedom of movement is not systematically impeded, but is experienced in an arbitrary way. He confirms freedom of moment between the camps, subject to limitations of space. He also refers to Palestinians who live in the camps, and those who live outside of the camps, the latter tending to be:

> "The better off and the most wretched"

60. In KK the Tribunal had held that the checkpoints applied equally to Lebanese citizens and to Palestinians, and the same levels of harassment applied. Miss Laing pointed out that of course this is no longer the position as the Syrian checkpoints are no longer in place. However, the Tribunal had also reached the same conclusions, as set out above, as to the ability to live outside of the camps and that Palestinians were free to move from one camp to the other. She submitted that the allegation that Palestinians are persecuted by reason of their freedom of movement being restricted is unfounded.

61. In relation to the issue of education, Miss Laing submitted that both appellants had attended primary and secondary schools. The first appellant had begun a course at Beirut Arab University, although it was not completed. The second appellant did a two year carpentry course at Siblin College, from which he qualified. She referred us to what the Tribunal in KK found with regard to education, that UNRWA was the sole provider for Palestinians. Most Palestinians were able to attend Lebanese schools and universities. Primary education was satisfactory, secondary less so. Miss Laing submitted that Mr Quilty did not adduce any evidence that the basic educational needs of Palestinians in Lebanon were not met other than to make a reference to increased class sizes. She submits that the background material, the COIS and USSD reports, demonstrate that the inadequacies in the provision of education apply equally to Lebanese citizens, Palestinians and other non-nationals.

62. In relation to employment, Miss Laing pointed out that the first appellant had worked as a guard and the second had worked for a French company as a carpenter after he graduated from the Siblin vocational training centre. There was no evidence and neither appellant had suggested any period of unemployment. The first appellant had taken up hairdressing in the UK and claimed that he would not be permitted to work as a hairdresser in Lebanon, so he would be unemployed.

However, the Guardian article submitted by the appellants states that young Palestinians in Ein El-Hilweh who are lucky enough to obtain work can only get jobs as barbers, taxi drivers and construction workers. The memorandum of 27 June 2005 lifted the restriction on Palestinians working in manual and clerical jobs (but not professions), so hairdressing is no longer an excluded job. Mr Shiblak's evidence was that he was not sure whether hairdressing was proscribed or not.

63. The Tribunal in KK considered the lack of work permits granted to Palestinians and the fact that when granted they were for unskilled occupations. Mr Quilty in his report at page 5, third paragraph, gave evidence that some individual Palestinians had been employed in professions that were legally forbidden to them because their lack of status made them cheaper to employ. He refers to the employment for example, of Burj El-Shemali residents in seasonal labour in the agricultural and construction sectors. Taxi driving used to be available as alternative employment for Palestinians and had become less accessible as a result of the banning by the government of cheap fuel in most public transport vehicles. A small faction of well-educated Palestinians had found work with the UNRWA or the NGOs. Miss Laing pointed out that Dr Mahmoud Al Ali (report in the appellant's objective evidence bundle at pages 20 to 22) appears to be one such well-educated Palestinian. His education started at Siblin training centre although he is now a Lebanese citizen.

64. Mr Quilty at page 10, paragraph 2 of his report states that Burj El-Shemali's unemployment levels reflect its location in the undeveloped south of Lebanon and economic disparities in Lebanon as a whole, where available economic opportunities are concentrated in Beirut at the expense of outlying regions. The Palestinians he states "have long faced competition from Syrian migrant labourers" who are willing to work for less, but since the assassination of Hariri, the numbers of Syrian migrant labourers competing with Palestinian's have declined.

65. Miss Laing referred to the introduction of reforms in 2005 by the Labour minister Trad Hamedeh. These reforms sought to improve the situation for Palestinians who wished to work. There are restrictions on the jobs that non-nationals (not just Palestinians) are entitled to undertake; from 7 June 2005 the list of excluded jobs has reduced from seventy-two to twenty-two. As she had already stated, the restriction on undertaking manual and clerical work was lifted, and only the professions are still excluded. Whilst accepting that the memorandum introducing this change was not implemented consistently, she submitted that it signalled a profound change of approach for the Lebanese government. The new work permit regime is more reasonable than its predecessor. Mr Quilty said at page 14, paragraph 8:

> "A sympathetic Labour minister has set out to regulate and open up the job market for Palestinian labour".

66. In relation to shelter and infrastructure, Miss Laing pointed out that the first appellant's family have two houses. Neither appellant had said when they lived in Lebanon they lacked adequate shelter or were subject to poor living conditions. Both Mr Quilty in his report at page 6 paragraph 2, and Mr Shiblak in his report, page 7,

paragraphs 3(h) and (i), refer to the easing or partial removal on the ban on construction work in the camps. Inhabitants need permission to let the construction materials in. She pointed out that in the COIS, reference is made to information from UNRWA (paragraph 6.107), that whilst permission is required from the Lebanese army to bring construction materials to the camps, it did not cause delays in the period covered by the report. She also referred to the position at the time of KK when construction in the camps was prohibited. In general the infrastructure in the camps was poor, with overcrowded living conditions, poverty, and unemployment. The roads and sewers were poor too.

67. She referred to El-Buss camp where the first appellant spent his primary school years and where inhabitants live in concrete block shelters (COIS, paragraph 6.156). It is exactly the same in Burj El-Shemali, where he moved. In Rashidieh, the other camp where the first appellant lived, she quotes paragraph 6.16 of the COIS where it states:

> "Almost all shelters in the camp are ventilated and supplied with water and electricity".

68. The homes in this camp have private toilets, but there is no sewage network. The second appellant has lived in Burj El-Shemali and Ein El-Hilweh where, according to paragraph 6.142 of the COIS:

> "Shelters are small and very close to each other. Some still have zinc sheet roofing."

69. In relation to healthcare, she submitted that neither appellant said they did not have access to adequate health care in Lebanon, or that they were discriminated against in the receipt of healthcare. The second appellant claimed that he had received treatment in hospital for a month following an attack in which he was injured – D4 of the respondent's original bundle. His account was of course disbelieved by the Adjudicator. However his statement indicates on its face, no difficulty with access to healthcare. In KK the Tribunal referred to the fact that UNRWA is the sole provider of health services and that the Palestinians only have limited access to the government provided health service. The UNRWA services have been reduced because of budget cuts. Miss Laing stated that UNRWA operated twenty-five primary health care facilities and provided emergency aid to families unable to support themselves. UNRWA had contracts with thirteen Lebanese hospitals for the provision of specialist care. There were deficiencies in the provision, both by UNRWA and by the Palestinian Red Crescent. She quoted from the COIS, paragraph 5.43, which deals with the UNRWA health programme and states:

> "The UNRWA health programme aims to protect, preserve and promote the health status of Palestinian refugees and meet their basic health needs consistent with basic WHO principles and concepts and with the standards of public sector health services in the agencies area of operations."

70. She stated that in addition there are a number of NGOs that are active in the camps and which do provide, inter alia, medical services.

71. Mr Quilty in his report at page 6, paragraph 9, states that the UNRWA health care centre at Burj El-Shemali now has two doctors instead of one. This is considered a "great improvement in service". Up until a year previously there had been only one doctor on the staff.

72. In relation to the land ownership, the Tribunal in KK noted that Palestinians did not have the right to purchase land in Lebanon or to inherit land, whereas nationals of recognised states could do so. There are nevertheless restrictions on foreigners owning land, and Mr Shiblak had referred to this in his report at page 9, paragraph 4(d). The Lebanese parliament justified the restrictions on Palestinians on the ground that it was protecting the right of Palestinians refugees to return to the homes they fled after the creation of the State of Israel in 1948.

73. In relation to access to social security, legal aid, and the right to establish institutions, Miss Laing submitted that it is correct that the Lebanese government denies these rights to Palestinians on the basis that they are not nationals of a state which provides these rights on a reciprocal basis to Lebanese nationals resident in that state. She submitted that this is proper justification for the denial on the basis of either international comity (i.e. the right to establish institutions), or on the basis that the rights in question impose costs on the host state such that the host state is justified in restricting their provision to nationals of States which accord the same rights to Lebanese nationals. She reminded us in her oral submissions that Mr Shiblak had accepted that States were entitled to pursue reciprocal arrangements. So far as the right to establish institutions is concerned, she asked us to note what is recorded in the USSD report at section 6A:

> "Palestinians refugees may organise their own unions; however, because of restrictions on their right to work, few Palestinians participated actively in trade unions."

74. Miss Laing submitted that access to social security and legal aid are aspirations put forward in the fourth category of Hathaway's hierarchy of human rights, and lack of access to these aspirations does not fall within the definition of persecution.

75. Miss Laing then dealt with the additional arguments relied on by the appellants, of which there are four. The first is that there was a lack of evidence before the IAT in KK about the differences in treatment between the Palestinians and other non-nationals resident in Lebanon. The second is that the AIT should consider the situation of "non-ID Palestinians". These number between 3,500 and 5,000 persons. They are not entitled to UNRWA support, and are not registered with the Lebanese authorities. Neither appellant in this case is a non-ID refugee and whilst there is evidence that non-ID refugees do have particular difficulties, it was agreed that this was not a relevant issue in these appeals and that matter was not pursued. The third is that significant reliance is placed by the appellants on the specific provisions of the Refugee Convention and of the Stateless Convention. The fourth is that there is discrimination here which breaches international norms (because it is discrimination on racial grounds) and makes it more likely to constitute persecution.

76. Dealing with the first, Miss Laing accepted the AIT had mentioned lack of specific evidence on the differences in treatment between Palestinians and non-nationals resident in Lebanon who are not Palestinians, and she accepted there was now more evidence available. She submitted that the evidence showed that the difference in treatment stemmed from the lack of reciprocal arrangements, she put it more strongly, the impossibility of such arrangements. She submitted that the impossibility of any reciprocal arrangements was a rational justification for any differences in treatment of which complaint is made.

77. Miss Laing made a short submission on the appellant's reliance on the Refugee and Statelessness Conventions. She submitted the fundamental point was that Lebanon has made a conscious decision not to ratify either of these Conventions. She submitted that the use that could be made of Lebanon's failure to comply with the provisions of both Conventions was limited.

78. Dealing with the issue of discrimination on the grounds of race, Miss Laing said it was the Secretary of State's submission that the evidence did not show that the Lebanese state discriminated against Palestinians on grounds of race. Rather, the situation of stateless Palestinians stems precisely from their statelessness. She relied on the evidence that 30,000 or so Palestinians had been naturalised, thus acquiring citizenship. Stateless Palestinians are neither in an analogous situation to Lebanese citizens, nor to nationals of other states, in particular she argued that nationals of States which have reciprocal arrangements with Lebanon.

79. The respondent further submitted that the Roma rights case- R v Immigration Officer at Prague Airport and another *ex parte* European Roma rights Centre and others [2004] UKHL 55, (produced by the appellants), concerned the practices of immigration officers at Prague Airport. This was a case where the House of Lords held that the operation of a scheme for questioning applicants for leave to enter discriminated against citizens of the Czech Republic on the grounds of race, because those of Roma ethnic origin were questioned differently from those of non-Roma ethnic origin. She submitted that the observation of Baroness Hale, quoted at paragraph 41 of the Mr Blum's skeleton, should be understood in that context. Baroness Hale stated that Article 1(2) of the ICERD "…certainly does not mean that State Parties can discriminate between non-citizens on racial grounds." She further submitted that the obligation of "good faith" referred to in paragraph 34 of his skeleton was of limited scope, and referred us to paragraphs 62-64 of Lord Hope's speech in the Roma rights case.

80. Turning to Mr Blum's argument that the justification for any differential treatment was irrelevant, she submitted that the only reference to motive being irrelevant was in the speech of Lord Steyn, where he refers to Nagarajan v London Regional Transport [2000] 1 AC 501, at paragraph 36 of the decision. This was a case dealing with the Race Relations Act 1976 under which it is clear that direct race discrimination cannot be justified (Section 1(a)). She submitted that the same was not true of Article 14 of the ECHR. Under Article 14, the court considers whether there is

objective and reasonable justification for the differential treatment. She argued that in any event, the evidence did not establish direct race discrimination, and relied on her earlier submissions relating to the 30,000 Palestinians who had been naturalised. She submitted that the Lebanese authorities, in some areas, differentiated between non-nationals according to whether they have reciprocal arrangements with their home state. She argued that this had a differential impact on stateless Palestinians, but that it was indirect discrimination which, even under the Race Relations Act, can be justified. She submitted that the Tribunal should follow the line adopted in KK and consider the Lebanese government's justification of the steps it has taken.

81. In conclusion in her skeleton, Miss Laing said that the Secretary of State submitted that the position of Palestinians in the camps generally had not changed in any material way since the IAT decision in KK. She submitted that it was plain that, taking the difficulties faced by stateless Palestinians residing in Lebanon cumulatively, neither the minimum level of severity for persecution nor the Article 3 threshold is reached. In this regard she also referred to the recent decision of the Tribunal in MA (Palestinian Arabs – Occupied Territories – risk to Palestinian territories) CG [2007] UKAIT 00017 in which the Tribunal accepted there was extensive economic deprivation, and there were much more intrusive security measures and still found that neither persecution nor a violation of Article 3 was established.

82. Miss Laing made further representations to us which we deal with where necessary in the context of Mr Blum's skeleton. She did submit that we should approach the evidence of Mr Shiblak with caution. She argued there were two flaws to his approach. First of all, he did not come across as an impartial, objective expert. She submitted that he had allowed his sympathy towards the Palestinians to cloud his objectivity. Secondly, he had not been altogether careful and scrupulous in his preparation of the report because even though the relevance of the IAT's decision in KK must have been obvious to him, he did not even look at it for the first report and only glanced through it in preparation for the second report. This was reflected in the fact that he had tried to suggest that the position at the time of KK was that there was no restriction on Palestinians owning property, whereas the reality was the opposite. She said that the second appellant, in his statement dated 23 December 2004 at paragraph 11, had said that there were restrictions on his working in the UK. However there was a considerable amount of evidence in his statement served for the hearing today which suggested that he had been working. There had been no change in his official position since 2004, when he was granted temporary permission, with a restriction on working. Mr Shiblak had said that he would have to work in the black market if he was returned to Lebanon; however it was clear that he had been working in this way in the United Kingdom.

83. Finally, in response to Mr Blum's submission that the first appellant had been accepted as a low level member of Fateh, Miss Laing submitted that since the head of Fateh in Lebanon had been pardoned, and he was in any event a low level member,

there was no real risk established. In any event, the core of his claim as to persecution had been rejected.

Submissions On Behalf Of the Appellants

84. Mr Blum relied on his skeleton dated 28 June 2007.

85. In relation to Mr Shiblak's evidence, Mr Blum invited us to attach weight to what he had said in his statement and in oral evidence to us. He said the comments he had made about the second appellant at page 11, paragraph 11(c) of his report, was a repetition of the evidence that had been given to him by the appellant and was not evidence of empathy or bias. Mr Shiblak had said that he was an objective witness and he had an impressive pedigree. He had experience of the camps, and that had been lacking in the decision in KK. He asked us to find that he had been overwhelmingly consistent.

86. Mr Blum clarified that the main issue before the Tribunal today was whether on a cumulative basis, discrimination endured by Palestinians living in Lebanon, was capable of constituting persecution for the purposes of the 1951 and 1950 Convention. He said it was clear that there was no need to establish physical harm. The conditions, to which Palestinians were generally subjected, breached both Conventions. It was the appellant's argument that there was differential discrimination between two sets of non-nationals, i.e. Palestinians and other non-nationals. The purported objective justification was simply a mechanism for bypassing the underlying intention of marginalising the Palestinian community. Mr Blum said that the position of the Palestinians living in Lebanon was tragic. They were out of their homeland but there was a protection gap. Palestinians were excluded by virtue of Article 1D of the Geneva Convention, i.e. that they were in some cases deemed to be persons already receiving UN protection or assistance – from UNRWA – which was supposed to provide them with greater protection but did not as it only applied to those who left Palestine in 1948 and their descendants. He argued that the Palestinians' position should be considered as analogous to ordinary refugees under the Geneva Convention. He submitted that the Tribunal could look to the requirements of the Geneva Convention as a means of recognising the rights of Palestinians. In his skeleton at paragraph 26 he states that the 1951 Convention is instructive as to the level of treatment that is mandated for recognised refugees, and is relevant as to whether Lebanon has acted in a discriminatory manner and unlawfully under international law. The treatment of Palestinian refugees must be considered against the human rights norms that are applied to other recognised refugees (and not to be considered in any way analogous to the rights of migrant workers). Mr Blum accepted that Lebanon had taken a conscious decision not to sign the Geneva Convention, which was Miss Laing's point, but a state could not exclude rights that were afforded in international law. He referred us in particular to paragraph 6 of the Geneva Convention that requires that refugees be exempt from requirements:

> "which by virtue of their nature a refugee is incapable of fulfilling"

87. He submitted this was indicative of how Palestinian refugees should be treated under international law, their position being very similar to those of Convention refugees. He cited the example of the ability to obtain employment in Lebanon for a Palestinian. In relation to a Palestinian refugee who is a doctor or a lawyer it was impossible for him to work as a doctor or lawyer in Lebanon because he had no state that would enable the Lebanese government to enter into any reciprocal agreement. This was discriminatory against Palestinian nationals. He referred us to Article 7 of the 1951 Convention which states that all refugees should enjoy exemption from legislative reciprocity in the territory of the contracting states after a period of three years' residency. The same exemption from reciprocity is found in the 1954 Convention Relating to the Status of Stateless Persons. Whilst acknowledging that Lebanon had not signed either Convention, Mr Blum argued that there was a need to look at the real motive of the Lebanese government's approach. He said that although it was correct that states were entitled to enter into reciprocal agreements, when they were dealing with stateless persons they had to bear in mind the provisions of the 1954 Convention. Mr Blum drew our attention to a number of Conventions that have been signed by Lebanon: The International Covenant on Civil and Political Rights (1966) (the ICCPR); the ICESCR and the ICERD. In relation to the ICESCR, whilst he acknowledged Article 2(3) (s*ee para 50*), he submitted that article 11 of that Convention was of prime significance in the appeal. This reads:

> "The state parties to the present covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to continuous improvement of living conditions. The states parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent."

88. At paragraph 44 of his skeleton Mr Blum turned to deal with the issue of justification for discrimination. He submitted that in this regard it was necessary to consider the vulnerability of the Palestinians as stateless people. It could not be compared to migrant workers from their own state. It was the appellants' submission that this was significant where there was a marked differential impact on the Palestinians as a specific ethnic group. He submitted that discriminatory treatment between nationals and non-nationals is more likely to amount to persecution if it breaches internationally protected norms. His reliance on the covenants set out above, that Lebanon has signed, supported this. He submitted that systematic discriminatory breaches of rights such as the right to work; to education; to social security and to an adequate standard of living were universally condemned and their protection was universally recognised. Lebanon's treatment of Palestinian refugees should be considered against treatment to be provided by host states under the 1951 Refugee Convention and the 1954 Statelessness Convention. Mr Blum argued that in approaching the legitimacy of reciprocal agreements it was important to bear in mind the responsibility of states to protect those who were stateless. He took issue with the submission that Palestinian refugees were not discriminated against because they were Palestinian, but because they were stateless and argued that Tawteen was the overriding reason for those reciprocal agreements. The majority of Palestinians were Sunni Muslims and their naturalisation would upset the precarious demographic and

religious balance between Christians and Muslims in Lebanon. Mr Blum pointed out that the naturalisation of 30,000 Palestinians relied on by the respondent referred to seven villages where the residents were predominately Shia. He submitted that the Palestinians were clearly discriminated against because they are Sunni Muslim. Under the various covenants that it has signed the Lebanese state had to act in good faith and in accordance with international covenants, and it clearly had not done so in relation to the Palestinians.

89. Mr Blum said there were two principle justifications for the discriminatory treatment of Palestinian refugees by the Lebanese authorities. The first was to safeguard their right of return to Palestine: the majority of Palestinians sought to resist naturalisation in Lebanon for this reason. The second is fear of Tawteen. However the Palestinian refugees have never sought citizenship or the right to vote. It was not necessary to grant citizenship or the right to vote in order to give civil rights to Palestinians in Lebanon. He argued that Tawteen has an enormous impact on the psyche of Palestinians and the Lebanese. There was no national law or proportional justification for the discrimination against Palestinians on this basis and he submitted the Tribunal should exercise caution to ensure that it did not accord undue deference to the Lebanese government's asserted justification for the differential treatment. He argued that laws that differentiate between non-nationals and stateless persons constitute a disguised discrimination if they overwhelmingly affected only one ethnic or national group, and this was the position in Lebanon. He referred us to the latest US State Department report (objective bundle at page 265) which reports:

> "Systematic discrimination against Palestinian refugees continued"

90. The CMI Working Paper at page 40 of the objective bundle refers to:

> "Institutionalised legal discrimination of refugees."

91. He submitted that Palestinian refugees were subjected to persistent discriminatory denial of second and third level rights, the effect of which was sufficiently serious to amount to persecution.

92. Mr Blum submitted that the underlying objective of reciprocal agreements was to ensure that Palestinians did not gain a foothold. He argued it made little difference to the resources of the Lebanese state where, for example, they might have a reciprocal agreement with Syria, because the Lebanese state still had to provide benefits (i.e. medical, social) to those workers and that was not of benefit to Lebanon. The primary motivation was not the protection of state resources, but was an attempt to modulate the situation for Palestinians. The attempt to exclude Palestinians was racial. He invited the Tribunal to find that the refusal to afford rights to Palestinians by Lebanese for these reasons was clearly motivated by discrimination.

93. Turning to the Tribunal's decision in KK, Mr Blum submitted that the Tribunal's attention in that case had not been drawn to the international agreements that he had now referred this Tribunal to and that would entitle the Tribunal to reach a different

conclusion on the evidence before it today. He submitted that the Tribunal in KK gave insufficient consideration to the differential treatment between Palestinians refuges and other non-nationals. The application of reciprocal agreements to Palestine stateless refugees constituted a serious breach of international human rights norms, with specific reference to common Article 7 of the 1951 Refugee Convention and the 1954 Statelessness Convention, in conjunction with the ICCPR, ICESCR, and ICERD. He submitted that when they evaluated the justification for differential treatment of Palestinians, the Tribunal in KK considered the impact on Lebanese society were Palestinians to be granted citizenship. This approach took no account of the option of granting them civil rights but not naturalisation. The approach was not consistent with international human rights norms. He submitted there had been a change in circumstances since KK was decided. The Hezbollah-Israel war; the increase in extremist groups, and the recent conflict in the northern camp of Nahr Al-Bared have created a greater atmosphere of insecurity and increased the risk of harassment of Palestinians, especially male Palestinians.

94. Turning then to specific areas of discrimination, beginning with freedom of movement, he reminded us at paragraph 71 of the skeleton of the evidence of identity checks on Palestinian refugees entering or leaving certain refugee camps, by the Lebanese army and of random stops by Lebanese police as Palestinians exit Beirut, and the fact that Palestinian refugees have been singled out during demonstrations involving other nationalities. In addition Mr Blum said that if it was correct that there was no specific targeting of Palestinians over and above other non-nationals, why was there a comment at page 268 of the US State Department Report that Palestinian refugees were subject to arrest and detention.

95. In relation to education, in his skeleton he pointed out the evidence concerning restricted access to education for non-nationals, though this applies to all non-nationals (paragraphs 72 and 73 of the skeleton). Mr Blum said that the position of Dr Mahmoud El-Ali could not be determinative of the general position for Palestinians. He was from one of the seven villages on the border and had been naturalised in 1994. He said that although UNRWA was mandated to provide education, it had clear problems with funding. He accepted there was no obligation in international law on Lebanon to provide education to Palestinians, but that right was protected under the ICERD, and it was infringed by denial of access to education to Palestinians.

96. In relation to real estate ownership, Mr Blum submitted that there was clear discrimination against Palestinians in this area. He referred (at paragraph 78 of the skeleton) to the introduction of Decree 296 (3 April 2001) that effectively prevented Palestinians from owning, bequeathing or even registering real estate which they had bought or were buying in instalments. This states:

> "No real right of any kind may be acquired by any person that does not carry a citizenship issued by a recognised state, or by any person if such acquisition contradicts with the provisions of the Constitution relating to the Prohibition of Settlement (Tawteen)."

97. He submitted that the law was worded in a manner that exclusively prevented Palestinians from owing property. This discrimination against Palestinians with regard to the right to own and inherit property when taken in conjunction with inadequate housing conditions in refugee camps, he submitted, created a situation where Palestinian refugees are discriminated against in their enjoyment of the right to adequate housing, which violated Article 11(1) of the ICESCR. Further, discrimination in relation to property ownership is prohibited under Article 5 of the ICEDR. Therefore Lebanon's justification was inconsistent with its obligations under international law.

98. In relation to access to employment, Mr Blum submitted that Palestinians should be in an analogous position to refugees covered by Article 17 of the 1951 Refugee Convention which requires contracting states to accord to refugees lawfully staying in their territory, the most favourable treatment accorded to nationals of foreign countries in the same circumstances, as regards the right to engage in wage earning employment. He pointed out that the right to work is an "economic and social" right protected by Article 6 of the ICESCR. Mr Blum referred us to two cases, the first, the Refugee Status Appeals Authority for New Zealand in Refugee Appeal No. 73/92 Re CZZ [5 August 1994] in which it was observed that:

> "… substantial impairment of ability to earn a living coupled with other discriminatory factors could, depending on the circumstances, constitute persecution."

99. He accepted that the case was not successful on its facts but said it was of persuasive authority that the impaired ability to earn a living could amount to persecution.

100. Borca v INS 77 F. 3d 210, 215-16 (7th Cir 1996), was a case in the US Court of Appeals, in which the court investigated the possibility of a well-founded fear of economic persecution even where there was some ability to find alternative work. The court said in that case:

> "To establish a well-founded fear of economic persecution, Borca must show that she faces a probability of deliberate imposition of substantial economic disadvantage on account of her political opinion."

Mr Blum accepted that this was a case involving different legislation. However the court had found there was no need for physical harm to establish economic persecution, and he submitted the same principle applied in the UK jurisdiction. The US court had found the need for a deliberate imposition of punishment and the analogy here was that there was a deliberate restriction on the employment for Palestinians in Lebanon, and the situation was therefore analogous.

101. Mr Blum said that the ministerial decree that regulates the rights of Palestinians to work in Lebanon – Decree No. 17561 of 18.9.1962, contains three restrictive principles: (a) obtaining a work permit; (b) national preference; and (c) reciprocity of rights. He reminded us again that the status of stateless Palestinians meant that the reciprocal treatment of Lebanese nationals is not possible due to the absence of a recognised

Palestinian state; Palestinian refugees are thus at a disadvantage from other foreign nationals seeking work in Lebanon.

102. He submitted that Palestinians were excluded from legal, medical, pharmacology, architectural and engineering professions because of the reciprocity agreements and requirement for Lebanese nationality. Although this would apply to other non-nationals, again Mr Blum argued that this would have a differential impact on Palestinians, as opposed to other non-nationals, as they could not avail themselves of reciprocal agreements. He points out at paragraph 91 of the skeleton that the amendments proposed by Minister Trad Hamadeh, i.e. memorandum 1/67, dated 27 June 2005, which allowed Palestinians to obtain work permits for manual and clerical jobs, had made no de facto difference, because, as Mr Shiblak had said the memorandum had not been implemented consistently, and the ban on Palestinians seeking employment in the professions had remained in place. He said it was particularly telling that in 1999 only 350 work permits were granted to resident Palestinians compared with more than 18,000 permits issued to Egyptian labourers. He points out that many Palestinians, especially in the south of Lebanon, work in agriculture and that this sector has suffered severe losses as a result of the Israeli bombing. Many Palestinians have, as a result, been unable to return to this work. This was clearly a factor that had occurred after the Tribunal's decision in KK.

103. Mr Blum drew our attention to the limited ability of UNRWA to provide for Palestinians, because of its shrinking budget. The PLO has also faced a large decrease in funds and that has led to a reduction in the level of support it provides. The reality is that only about 5% of Palestinians in Lebanon are in lawful employment. This information is taken from the report entitled "Human Rights Dilemma of the Palestinian Refugees in Lebanon" by Mr Souheil El-Natour, the director of the Human Development Centre in Beirut. At page 14 the report quotes a director of an NGO, who has stated that nearly 60% of all Palestinians in Lebanon live under the poverty line, as defined by the UN. Mr Blum said that this illustrated the dynamics of the Palestinian employment situation in Lebanon.

104. Turning to access to social security, Mr Blum acknowledged that this was not a second or third category right as defined by Hathaway; however it was a factor to be taken into account in the round. Again the 1951 Refugee Convention requires contracting states to accord the same rights in respect of social security to refugees lawfully staying in their country as it does to nationals. The granting of a work permit does not permit Palestinians to benefit from the Lebanese social security system. Mr Blum argued again that although non-nationals do not have access to social security, except when their known state has a reciprocal agreement with Lebanon, for the reasons before, this effectively excludes all Palestinians because of the differential treatment that results between Palestinians and other non-nationals.

105. The same points are made essentially in relation to the right to establish institutions, where it is submitted that Palestinians are not allowed to establish their own civil society associations, and because non-nationals may only create associations under

the condition of reciprocity, again this has a disproportionate impact on the Palestinians.

106. In relation to health services, the Palestinians have no access to Lebanese government hospitals, or other related health services. Mr Blum accepted that UNRWA is mandated to provide health services for the Palestinian refugees. However again he submitted that because of the significant reduction in funding to UNRWA, this has meant a serious deterioration in the level of service offered. In particular, there has been a significant reduction in funding for emergency treatment. Mr Blum submitted that the provision of health care and the restricted ability of UNRWA to cover the health needs of the Palestinian refugees, had to be regarded in the context of the international agreements that Lebanon had signed and which do not distinguish between citizens and non-citizens alike.

107. In relation to legal aid, again this would only be offered to non-citizens where they were nationals of countries providing reciprocal rights to Lebanese nationals, and that effectively excluded Palestinians.

108. Mr Blum drew our attention to Lebanese societal attitudes towards Palestinians, many of whom are blamed for Lebanon's misfortunes. He drew our attention to statements by government ministers, including the President who has indicated that Lebanon will never integrate Palestinians, or give them the rights they demand because that would remove them from the support of UNRWA. He referred us to the US State Department Report, March 2007, which confirms that Palestinian groups in refugee camps operate an autonomous and arbitrary system of justice within the camps that is not under the control of the Lebanese state. According to the same report, Palestinian refugees are subject to arrest, detention, and harassment by the state security forces and rival Palestinian factions. The US State Department Report confirms the difficulties faced by Palestinian refugees in relation to discrimination, particularly in the area of employment.

109. Turning to the access right for building and construction materials into the refugee camps and to conditions in the camps, Mr Blum acknowledged the conflicting evidence regarding the lifting of the prohibition on building materials entering the camps. However, he submitted the prohibition remains and it exclusively affected the Palestinians. It inhibits the ability to repair and maintain their shelters. The prohibition is a measure only taken in relation to Palestinian camps and directly discriminates against Palestinians. He referred us in this regard to the evidence contained in the Amnesty International Report, "Lebanon: Limitations on Rights of Palestinian Refugee Children – Briefing to the Committee on the Rights of the Child", 5 July 2006, at page 175. He drew our attention to the evidence that highlights the conditions in the camps, which are atrocious. For example in the report entitled "Institutionalised Discrimination against Palestinians in Lebanon, a report submitted to the UN Committee on the Elimination of All Forms of Racial Discrimination" dated February/March 2004, at page 11, under the heading "Housing," it states:

> "The refugee camps, where most Palestinians reside, are extremely crowded and are of poor condition. The average refugee household consists of 2.2 rooms and occupancy rate is 2.6 persons per room. Among recently displaced families, this figure rises to 3.4 persons per room. Most camps lack adequate water and electricity and only 57% of households are connected to the public sewage system. Nearly seven out of ten households are cold and difficult to heat during winter. Lebanese authorities prohibit Palestinians living in the camps from transporting building materials into the refugee camps, especially in southern Lebanon. Hence, the shelters are dilapidated. In some camps, restrictions are so extreme that authorities even confiscate wood planks and nails from refugee camps residents."

110. He referred us to the risk encountered in the camps because of the high levels of crime and, since the decision in KK, the decline in security in the camps and the decline in UNRWA's services in terms of its resources for service delivery.

111. Mr Blum referred us to some of the particular difficulties faced by Palestinian refugees such as health problems; poverty; security controls and the increasing influence of armed groups and radical Islamist movements within the camps. In this regard he reminded us of the personal statement made by the second appellant's common-law wife. He said that since the decision in KK, there had been a decline in the security of the camps, and it was not in issue that there had been a rise in fundamentalism and extremist groups operating within the camps. This has resulted in an intensification of violence in the camps which was likely to put normal Palestinians in a much more precarious situation.

112. He also referred us to the recent fighting in the Ein Al-Hilweh and the Nahr Al-Bared refugee camps which have caused a large migration of Palestinians and raised the risk of indiscriminate violence. He accepted that neither appellant was from these camps, and the evidence that is quoted at paragraphs 130-133 of his skeleton related specifically to those two camps. However, he also made submissions regarding the Bourj Al-Shamali refugee camp. The population of this camp is approximately 17,000 and it is said to be one of the poorest camps and a symbol of Palestinian deprivation in Lebanon. For this he refers us to the expert report of Mr Quilty at page 26 of the appellant's authorities bundle, quoting an informant:

> "Bourj Al-Shamali, the author's NPA informant says, has the distinction of being one of the poorest camps in Lebanon. Another informant referred to the camp as a symbol of Palestinian deprivation in Lebanon.
>
> The camp's dominant architectural style is a single storey breeze block structure topped with sheets of tin for roofing. Like the other camps in south Lebanon, the residents of Bourj Al-Shamali were for years forbidden to bring building materials into the camp, so that when the ban was eased somewhat a couple of years ago, the camp infrastructure was in desperate condition.
>
> Three UNRWA operated wells provide the camp's water supply. Camp toilets are connected to percolating pits and sewage and waste water run into open storm drains along roads and pathways.
>
> A number of health conditions result from the camp's poor infrastructure. Skin diseases are particularly common, resulting from the consumption of contaminated water. For the last year

or so, an NGO financed project has been attempting to repair the infrastructure of the village and camp of Bourj Al-Shamali. The project has ground to a halt due to lack of funds.

All the authorities the author consulted for this report agreed that health conditions in Bourj Al-Shamali are particularly grievous."

113. Mr Blum pointed out that because most of the inhabitants of this camp were agricultural seasonal workers on a daily basis, and received very low wages; in the aftermath of the Hezbollah-Israel war many lost their means of livelihood because the citrus orchards are still full of cluster bombs.

114. Mr Blum invited us to consider the individual impact on the two appellants. The first appellant complained in his statement of the general discriminatory situation that he faced. This gave rise to a general atmosphere of a lack of security and although not enough on its own, when it was considered with all the other obstacles that had been identified, e.g. employment, health, standard of living, all of these factors together did constitute persecution. The second appellant was not able to complete his university education. He was a Fateh member, albeit found to be a low level one, and he would be returning to a camp where various factions were vying for control. Mr Blum submitted that in these circumstances he might be at a slightly higher risk on return.

The Tribunal's Decision in KK

115. We start by summarising what the Tribunal found in KK, at paragraphs 81 to 92. Here the Tribunal considered the general position for Palestinians in Lebanon. They considered evidence about the provision by UNRWA of schools, primary health care facilities and emergency aid to families unable to support themselves. At paragraph 82 the Tribunal noted:

> "82. UNRWA describes the situation of Palestinian refugees in Lebanon as involving them in facing specific problems. They do not have social and civil rights and have a very limited access to the government's public health or educational facilities, and no access to public or social services. The majority rely entirely on UNRWA as the sole provider of education, health in relief and social services. They are considered as foreigners and prohibited by law from working in some seventy-two trades and professions which has led to high levels of employment among the refugee population. It seems that popular committees in the camps representing the refugees regularly discuss these problems with the Lebanese government of the UNRWA officials. As we say, UNRWA provides services and administers its own installations and has a camp services office in each camp which residents can visit to update records or raise issues about services with the camp services officer who will refer petitions etc. to the UNRWA administration in relevant areas. It is said that socio-economic conditions in the camps are generally poor. There is a high population density and there are cramped living conditions and an inadequate basic infrastructure as regards matters such as roads and sewers. As we have noted above, some two-thirds of registered refugees live in and around cities and towns."

116. The Tribunal then turned to deal with the specific submissions made to them on the discrimination faced by Palestinians living in Lebanon, because of the way they were treated in contrast to Lebanese citizens. The first point made was that Palestinian

refugees were subject to arrest, detention and harassment by state security forces. The Tribunal rejected the submission that this was discrimination amounting to persecution, because they found on the evidence before them that this appeared to be a general problem and there was no distinction in the treatment between refugees and nationals. They considered the restrictions on freedom of movement, particularly at that time at Syrian checkpoints. The Tribunal found that the restrictions applied equally to Lebanese citizens and Palestinians, at least at the Syrian checkpoints, and the same level of risk and harassment and ill-treatment appeared to exist. We note, in this regard however, that matters have moved on since the Syrian withdrawal from Lebanon. The Tribunal found that it could not be properly said that conditions in the Palestine refugee camps were life threatening, generally. The Tribunal commented at paragraph 86:

> "… Our view is that although there is evidence as we have described briefly above – for example from the UNRWA at page 91 of Mr Southey's bundle – concerning the serious problems in the camp, to regard the circumstances in the camps as life threatening is excessive and objectively unfounded, having regard to the information in the international reports provided to us."

117. In dealing with the specific conditions of Palestinians within the camps, the Tribunal found that primary education was regarded as satisfactory, but secondary education less so. They found that Palestinians had only limited access to the government's public health service. They found that Palestinians were reliant upon UNRWA to provide general health services unless individual Palestinians were in a position to pay for private health care. Nevertheless the Tribunal pointed to evidence that UNRWA operated twenty-five primary health care facilities, and the provision of emergency aid to families unable to support themselves. They referred to the gross under-funding of UNRWA for these purposes.

118. Turning to construction in the refugee camps, at the time of the decision in KK, this was prohibited. The Tribunal noted that as a result most Palestinians lived in poverty in breeze blocks shelters. They said at paragraph 91:

> "91. The UNRWA website states that all of the camps suffer from a lack of proper infrastructure and overcrowding, poverty and unemployment. Living conditions and specific aspects of the infrastructure such as roads and sewers are described as being inadequate. The Amnesty International team which visited four camps between 27 May and 14 June 2003 noted that the sewage systems in most of the camps appeared to be damaged and posed health risks to the community and that living conditions were aggravated by crowding in the camps."

119. The Tribunal considered the evidence that the denial of work permits to Palestinians was brought to an end in 1991. They recognised however that in practice few Palestinians had received work permits, and those that did were mainly for unskilled occupations. The Tribunal noted that Palestinians were banned form working in seventy-two skilled professions, and that obtaining work was an ongoing problem. They referred to the fact that non-Lebanese nationals might be able to work within the list of trades and professions that were ostensibly restricted to Lebanese nationals, as they said:

> "Based on the exercise of discretion by the Ministry of Labour, founded on requirements of 'public interest' and 'reciprocity of treatment'."

120. The Tribunal then went on to set out their understanding of reciprocal agreements, which is as we have set out above. They recognised that reciprocal treatment was not open to Palestinians, since they are stateless, but said:-

> "It is however unclear from the evidence whether the Syrians and other non-Lebanese who work in significant numbers in Lebanon are able to fulfil this requirement, as we have not been told that there are reciprocal arrangements in place in Syria or the other countries available to Lebanese nationals. The same point can be made with regard to rights to social security. Again, Palestinians cannot qualify, given their inability to provide reciprocity of treatment, but again we are unclear as to the situation with regard to nationals of other states working in Lebanon. As regards the purchase of land, as we have noted above, it is clear that Palestinians do not have the right to do so in Lebanon or indeed to inherit land. It appears, however, that all nationals of recognised states can acquire or inherit property in Lebanon, according to paragraph 5 of the amnesty document, and there is clear discrimination in that regard. It is said in the State Department Report at page 86 of Mr Southey's bundle that the Lebanese parliament has justified this law on the grounds that it is protecting the rights of Palestinian refugees to return to the homes from which they have fled after the creation of the State of Israel in 1948. It is also said in this regard that other foreigners may own a limited size plot of land but only after obtaining the approval of five different district officers, and that the law applies to all foreigners but it is applied in a manner disadvantageous to the 25,000 Kurds in the country."

121. The Tribunal then turned to deal with the legal arguments in relation to discrimination in the appeals before them. We do not need to rehearse the arguments that were put to the Tribunal, as it is the same argument that is put to this Tribunal in relation to the disproportionate impact of the treatment of non-nationals by the Lebanese government, on the Palestinians. In dealing with whether the discrimination against Palestinians impacted on the second category of rights as identified by Professor Hathaway, (to which we have already referred) and this included the right to freedom from arbitrary arrest and equal protection for all, the Tribunal found that the evidence did not show that Palestinians in particular were exposed to a risk of arbitrary arrest. Outside of the camps they found that they were at no greater risk than a Lebanese citizen from Syrian checkpoints, although they accepted that they might be at greater risk at a Lebanese checkpoint. They accepted a submission on behalf of the respondent, that the latter was the product of the historical problems in Lebanon, the camp violence and the civil war and concluded:

> "that such detention and questioning of Palestinians as takes place at Lebanese checkpoints has a significant degree of justification to it in light of the understandable concerns that the authorities might have."

122. In relation to equality of protection for all, the Tribunal noted the Lebanese authorities did not tend to assert their authority in the camps, and that violence was a significant problem there. The Tribunal did not accept that the presence of armed factions on Lebanese territory amounted to the existence of:

"a public emergency threatening the life of a nation whose existence has been officially proclaimed, which is the only basis upon which it is said that second category rights can be denied".

123. Turning to Professor Hathaway's third category rights, e.g. employment, housing and medical care, the Tribunal concluded that it was clear it could in practice be difficult for Palestinians to live outside the camps, which meant that they had to live in very substandard accommodation inside the camps, and the restrictions they faced on employment denied them the funds necessary to purchase services privately. Having considered the submissions before them, the Tribunal came to the following conclusion at paragraph 101:

> "As regards these points, as we have noted above, although there is an extent to which under Lebanese law other foreign nationals are not discriminated against to the same extent in Lebanon as the Palestinians are, there is a lack of evidence in regard to particular matters as to whether or not they are in fact in the same position, especially as regards employment and access to social services. Moreover, other foreign nationals in Lebanon will have been regularly admitted under Lebanese immigration laws which may well give status restricted either in point of time or of the rights which they may pursue whilst lawfully there. That is a situation which is not apparently comparable to that of Palestinian refugees and their descendants, whose needs are to be provided for primarily by an international agency, UNRWA. If Mr Southey is relying on what he considers to be the genuine justification rather than the purported justification, then we find ourselves in agreement with Miss Laing that, bearing in mind the delicate political balance in Lebanon, the Lebanese authorities are entitled to take account of the potential impact upon their society of one-tenth of the population suddenly being granted citizenship and thereby enfranchised. The purported justification is not in any event in our view a legitimate one. The period of time factor is also in our view, though not without relevance, in no sense determinative. All the indications are that the Palestinians would prefer on the whole to return to their homeland rather than continue the existence that they have in the camps in the various countries in which they find themselves, and in our view it is a factor that the Lebanese state is entitled to take into account. We remind ourselves that this arises in the context of Article 26 of the International Covenant on Civil and Political Rights upon which both Mr Southey and Mr Cantor relied, but we consider that it has some relevance to the other provisions concerning discrimination to which we turn."

124. The Tribunal then considered Article 2(3) of the ICESCR, which we have set out earlier at paragraph 50 of this determination. After considering this same submission which was put to this Tribunal, they concluded as follows:

> "104. We are not sure to what extent a report of the UN Special Rapporteur [which had indicated that Article 2(3) must be narrowly construed, and could only be relied on by developing countries and only with respect to economic rights] can be said to qualify or give binding guidance on the meaning of a provision in an international agreement, and also we have not heard argument on whether Lebanon can be described as being a developing country, although we consider that it can probably properly be so described. If that is right, then even with the Special Rapporteur's restriction, the construction would cover economic rights if not social and cultural rights, and we do not consider that it can properly be said that the obligation to pay due regard to human rights in the context of Article 2(3) includes any discrimination which is outlawed by a Convention such as the Statelessness Convention. We note the point made by Miss Laing at paragraph 9 of her skeleton of the Statelessness Convention provides that contracting parties should accord a stateless person treatment as favourable as possible and in any event not less favourable than that accorded to aliens generally in the same

circumstances, for example, in relation to wage earning, employment, self employment and housing, and that in relation to free movement, stateless persons are also subject to the regulations applicable to aliens generally. There is in our view force in the submission at paragraph 10 of her skeleton that the treatment of aliens or stateless persons different from and less favourable than that accorded by the state to its own citizens, does not of itself amount to persecution, and in this context we bear in mind the distinctions that have been pointed out to us between the treatment of Palestinians in Lebanon on the one hand and citizens of other states in Lebanon on the other hand.

105. We return to the point made by Miss Laing concerning the particular context in which these appeals arise. It is not a straightforward issue of a state carrying out a range of discriminatory measures against stateless persons and others within its jurisdiction. It is clear from the UNRWA mandate that there are specific matters which are within the remit of UNRWA and other matters which are within the remit of the State of Lebanon. UNRWA on its own account is under funded and it is clearly labouring to do the best it can under very unpromising conditions. That having been said, undoubtedly there are aspects of discrimination against Palestinians in Lebanon for which the Lebanese state can be said to be accountable. Various justifications are given for this including economic circumstances, fear of armed militias and reserving the right of the Palestinians without restriction ultimately to return to their own homelands.

106. Having considered these matters as a whole, as we have done in some detail above, we have concluded that to the extent there is a discriminatory denial of third category rights in Lebanon for Palestinians, this does not amount to persecution under the Refugee Convention or breach of protected human rights under Article 3 of the ECHR. We do not consider that it has been shown that the discrimination is of such a degree that it can properly be described as degrading as set out in Ireland v United Kingdom [1978] 2 EHRR 25. On this point we address particularly the matters set out at paragraphs 16.5 of Mr Southey's skeleton. The contentions that he makes there and made before us in submissions concerning the perceived hopelessness of the situation for those in the camps and bearing in mind the points made in the East African Asians case with regard to the nature of discrimination are not such that it can properly be said to breach Article 3."

125. The Tribunal took into account, in relation to the appellants before them, that they would have somewhere to live in Lebanon, although they accepted that it would not be in ideal conditions, and they would have access to basic medical facilities, and that in the case of one appellant it was likely he would find work. They reminded themselves that the threshold in Article 3 is high and concluded in relation to the International Covenants to which they had been referred:

> "Moreover, the International Covenants to which we have referred contain, in contrast to the absolute nature of Article 3 of the ECHR, clear derogations and areas of appreciation. They are in many instances exhortatory and aspirant of an ideal, for that reason necessarily requiring modification in its application, as recognised by the covenants. Before any breach of such convents could properly be regarded as a breach of the provisions of the European Convention which bind the UK, there would require to be such flagrant denials as would result in the high threshold imposed by Article 3 being breached. In the circumstances, therefore, we consider that the Article 3 threshold would not be crossed in any of these cases on the basis of general attitudes in Lebanon towards Palestinians."

126. We have set out in some detail the findings from KK, because they illustrate why we have reached the conclusion below that the Tribunal has not been presented with any

new or significant evidence that should cast doubt on the decision reached by the Tribunal in KK.

The Law

127. We have reminded ourselves that the burden of proof is on the appellants to establish that they are refugees as defined in Regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (the Protection Regulations), and that they are entitled to the grant of asylum pursuant to paragraph 334 of HC 395 of the Immigration Rules as amended, and/or that it will be a violation of their Articles 3 and 8 rights under the ECHR to return them to Lebanon now. The standard of proof in both cases is one of reasonable likelihood or real risk. The parties have both referred us to Hathaway's definition of persecution; however we are bound to apply the definition contained in Regulation 5(1) of the Protection Regulations. This provides as follows:-

> "**Act of Persecution**
>
> 5(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 in (a)."

This definition accepts in our view that cumulative violation of human rights could create persecution, so in this regard it encompasses the Hathaway principles to which we were referred.

128. We have borne in mind that if the appellants do not establish that they are entitled to refugee status under the regulations that we will need to consider whether they have established that they are persons eligible for humanitarian protection pursuant to paragraph 339C of HC 395.

Our Findings and Conclusions

129. The first point we make is that the impact of the evidence that we have considered from both the first and second appellants, and the wife of the first appellant, about the conditions in Palestinian refugee camps in Lebanon, is not, in our view, any different in any material way from the evidence that the Tribunal considered in KK. The generally very poor conditions that all three witnesses described in their statements are the same conditions that the Tribunal in KK identified at paragraphs 82 and 88-91.

130. We have considered Miss Laing's submission that we should not attach too much weight to Mr Shiblak's evidence because he was not an impartial objective expert witness. We have also considered Mr Blum's submission that Mr Shiblak had clear and direct experience of the camps, in contrast to the expert witnesses who had appeared before the Tribunal in KK. On the latter point, we accept that Mr Shiblak is in a position to give his opinion about conditions in the camp, because he has seen them for himself and to that extent we do attach weight to his opinion, in the same way that we attach weight to what the appellants and the first appellant's wife said about conditions, again because they have direct and personal experience. However, as we have already stated, the conditions that have been outlined to us do not appear to have significantly changed since the decision in KK, and it appears to us that those factors alone cannot entitle us to go behind the decision in KK. We do think it is clear, from the manner in which Mr Shiblak expressed himself in his report and in oral evidence to us, that he clearly has a great deal of sympathy for the plight of the Palestinians in Lebanon. To this extent, his report is not wholly impartial. It is also of considerable concern to the Tribunal that Mr Shiblak clearly did not have a detailed knowledge of the evidence that had been before the Tribunal in KK, and the reasons for its conclusion. In his position, we would have expected him to undertake a detailed analysis of the Tribunal's decision in KK, to see whether his expert opinion took matters any further now. In relation to the general conditions, by which we mean employment, health matters, living conditions and property ownership, we are of the view that nothing Mr Shiblak described in his report is materially different from the situation that was considered by the Tribunal in KK. Indeed, under cross-examination Mr Shiblak accepted that the only difference that could be identified was that the security situation had got worse in the camps.

131. Nevertheless, we have considered Mr Shiblak's evidence insofar as it goes, which as we say relates to conditions in the camps, and amounts to his opinion that the Lebanese refuse to accord the same rights to Palestinian refugees as they do to their own nationals because of Tawteen. We deal first with the specific areas in their daily lives in Lebanon where the appellants claim that they will face discrimination, amounting to a breach of the Geneva Convention and their ECHR rights under Articles 3 and 8. The first is fear of arbitrary arrest or detention. We can see nothing in the evidence that has been presented to us that has changed at all since the decision in KK. The Tribunal in KK rejected a submission that Palestinians were exposed to a discriminatory risk of arbitrary arrest. It remains the case that the risk of arbitrary arrest applies to Palestinians, Lebanese citizens and other non-nationals in the same way. The Tribunal in KK considered the evidence that Palestinians were at greater risk at Lebanese checkpoints, however concluded that the security situation justified that risk. We do not consider that the comment in the US State Department Report:

> "Palestinian refugees were subject to arrest, detention and harassment by statue security forces and rival Palestinian factions."

is any more than a comment on the authorities' reaction to the security situation. This section of the US State Department Report refers the reader in turn to section 2D, which deals with freedom of movement within the country, and here it states:

> "Security services use checkpoints to conduct warrantless searches for smuggled goods, weapons, narcotics and subversive literature."

132. We do not see this comment as support for any other conclusion than that the Palestinians may well be on the receiving end of many of these searches. However, we agree with Miss Laing, that it is justified because of the very difficult security situation. More importantly, there is nothing material in this evidence that the Tribunal in KK has not already considered. The same applies to the issue of freedom of movement, which is bound up with the issue of arbitrary arrest and detention. We agree with the submissions of Miss Laing in this respect: and we find neither appellant has established that they will face persecution because they will be subject to discriminatory levels of arbitrary arrest and detention, or that they will be persecuted because their freedom of movement will be restricted.

133. In relation to education, we have noted the educational history of both appellants, which does not support their personal claims to have suffered persecution in this respect. We accept that there is restricted access to education for non-nationals in Lebanon; however these restrictions apply to all non-nationals. Nothing in the evidence that Mr Blum referred to us in his skeleton at paragraphs 72 and 73, persuades us that the Palestinians face any greater difficulties than any other non-nationals or, again, that there is anything fresh that was not considered by the Tribunal in KK in respect of this evidence.

134. In relation to real estate ownership, we have noted Mr Blum's submission that the Palestinians face differential treatment in comparison with other non-nationals because they do not have a recognised state, and hence are prevented by Decree 296 from owning or bequeathing etc. real estate. As Miss Laing pointed out, the Tribunal in KK considered this evidence. We have noted the quote from the US Department of State report at page 11 under the heading "Protection of Refugees":

> "The law does not explicitly target Palestinian refugees, but bars those who are not bearers of nationality of a recognised state from owing property. Palestinians no longer may purchase property, and those who own property prior to 2001 are prohibited from passing it on to their children. The parliament justified these restrictions on the grounds that it was protecting the right of Palestinian refugees to return to the homes they fled after the creation of the State of Israel in 1948. Other foreigners may own a limited size plot of land but only after obtaining the approval of five different district officers. The law applies to all foreigners, but it was applied in a manner disadvantageous to the 25,000 Kurds in the country."

135. We return to the specific point made by Mr Blum that this legislation, when taken in conjunction with the inadequate housing conditions in the refugee camps violates Lebanese obligations under Article 11(1) of the ICESCR and Article 5 of the ICERD. However, this evidence was considered by the Tribunal in KK at paragraph 92 of the decision, and there is nothing generally in the evidence that would entitle this

Tribunal to go behind the decision in KK, subject to what we say later about the international covenants that have been signed by Lebanon.

136. In relation to access to employment, we note the employment history of both appellants when they were living in Lebanon, which again does not support their case that they have faced persecutory treatment in this respect in the past. We have also noted the evidence that the first appellant may well be able to obtain work as a barber in Lebanon since hairdressing appears to be no longer an excluded job. Mr Blum's submission, whilst identifying the undoubted difficulties that Palestinians face in the employment field, still comes down to the fact that these difficulties stem, again, from the Palestinians' inability to avail themselves of reciprocal agreements. We accept the point made that it is possible for the impairment of ability to earn a living to amount to discrimination, constituting persecution. However we find that the limitations placed by the Lebanese authorities on Palestinians are properly justified on the grounds of their statelessness. We do not agree that this can be seen as analogous to a deliberate imposition of punishment: it is a state of affairs that exists in relation to Palestinians, outside of the control of the Lebanese authorities, i.e. that the Palestinians are stateless. In any event, this again was considered fully by the Tribunal in KK. We agree with Miss Laing's submission that even if the reforms of 2005 have not been implemented consistently, nevertheless it does show a significantly changed approach from the Lebanese authority. Whilst we accept that the reality on the ground is that a very small percentage of Palestinians obtain lawful employment, that situation prevails because of the lack of status of Palestinians. There is nothing in the evidence that Mr Blum submitted that persuades us that the Lebanese' authorities attitude towards the Palestinians in relation to employment is discrimination amounting to persecution. The fact that many Palestinians may have lost their employment in agriculture as a result of the Israeli bombing is a tragic consequence of the actions of an external force. It is not evidence that the Lebanese authorities are engaged in a strategy of discrimination against the Palestinians sufficient to engage either Convention.

137. We do not see that the evidence presented to us in relation to housing, and the maintenance of housing within the camps is, in any material way, different from that which the Tribunal considered in KK. We note that the evidence in relation to these particular appellants is that neither said that they lacked adequate shelter, although we have taken account of the evidence of the first appellant's wife when she visited Burj el-Shemali camp. Mr Quilty does clearly make a reference to the easing of the ban on the bringing of building materials into the camps in his report, as does Mr Shiblak in his report on the first appellant where he states at Section 8(h):

> "The present Lebanese government of PM Fuad Siniora took some steps in the last few years to improve the Palestinians' conditions so as to steer them away from being used as a political card by the Syrian government. The Lebanese government issued a pardon to the Fateh representative, Sultan Abu-Al-Ayneen, who was sentenced to death during the Syrian era of domination. The Lebanese government agreed to reopen the PLO office Beirut in early 2006. The government partially removed its long standing restriction of not permitting any construction work to improve infrastructure within the camps, mainly in the Ein El-Hilweh camp."

138. We would accept, having considered this evidence, that the prohibition on construction work in the camps largely remains, but it is clear from the expert evidence before us and the objective material, that the ban has been eased in some of the camps and that in any event, even where permission is required to bring construction materials into the camps, that does not seem to have caused significant problems. We do not gloss over in making this comment that the ability of Palestinians within the camps to repair and maintain their dwellings is very difficult, and we have accepted the evidence of those who have witnessed first hand what the actual living conditions are like on the ground. It is evident that shelters within the camps are generally in a very poor state of repair. Nevertheless, it seems to us that the situation was worse when the Tribunal considered this matter in KK. Then construction in the camps was completely prohibited, and if anything, the evidence now is that access to building materials has improved, albeit on a very small scale. There is nothing in the evidence that has now been put to this Tribunal that persuades that this is a relevant adverse factor that should be considered in relation to general discrimination against the Palestinians. On the contrary, the evidence is that there has been a small shift in the attitude of the Lebanese authorities to the Palestinians' benefit, not detriment.

139. In relation to health care, we have noted the reduction in funding to UNRWA and the service it provides to the Palestinians. We recognise that this must necessarily have resulted in a reduction in service to the Palestinian refugees. Nevertheless, we note Miss Laing's submission, as to the level of services currently available, and which we have set out at paragraph 58 of the determination. This was exactly the same evidence that the Tribunal considered in KK, and we would make the comment in relation to the position on health care, again, that nothing material has changed since that decision. We do not consider that the restricted health service available to the Palestinians through UNRWA demonstrates that they are discriminated against in relation to the provision of health care, for exactly the same reasons that the Tribunal gave in KK. There is no basis for this Tribunal to go behind that decision.

140. We think that very little turns on the submissions that were made to us with regard to the access to social security; legal aid and the right to establish institutions. Mr Blum's submissions all turned on the inability of the Palestinians to access these rights because of their statelessness. In addition, Miss Laing rightly pointed to the fact that social security and legal aid are aspirations that do not fall within the definition of persecution, which was accepted by Mr Blum. Nothing turns on his submission that the Refugee Convention requires contracting states to afford the same access to social security to refugees as to nationals, because Lebanon is not a signatory to that Convention. We do consider the denial of access to these rights by the Lebanese authorities on the ground that there is no basis for reciprocity, is justified on the grounds of cost. We note also the Tribunal in KK reached the same decision for the same reasons.

The Impact of Differential Treatment; Justification and the Lebanese Authorities' Obligations in International Law

140. We turn then to deal with the general submission before us that the Palestinian refugees' inability to rely on reciprocity because of their statelessness has a differential impact on them compared with other non-nationals that amounts to discriminatory persecution. The first point to note is that the Tribunal in KK identified that they had little or no evidence before them as to the position for other foreign nationals, and whether there were reciprocal agreements in place between Lebanon and other countries that enabled those nationals to benefit from access to rights which are denied to Palestinians. The only evidence before us is that of Mr Shiblak at Section 2 paragraph (C) of his report, in which he says that Lebanon has reciprocal arrangements with at least two Arab states, Syria and Egypt, and this has put the workers of these countries in a better position than Palestinians refugees in relation to their access to the job market; the number of issued work permits and social security benefits available to them. In support of this opinion, he refers to the fact that the Ministry of Labour issued 18,000 work permits to Egyptian workers in 1991, but only 350 permits to Palestinians. In April 2007 he visited Beirut when he met a group of Egyptian agricultural, construction and building maintenance workers at the airport, and during the course of a conversation with them was informed that they do receive health, medical and social benefits as part of a Memorandum of Understanding between Egypt and Lebanon.

141. We do not consider this evidence to be particularly helpful in terms of assessing any differential impact upon Palestinian refugees living in Lebanon. The evidence is very limited in its nature, and does nothing more than confirm what is in any event accepted, and that is that foreigners of other states, (in this case Egypt), which have reciprocal agreements with Lebanon, as a result do have access to a number of rights.

142. We reject Mr Blum's submission that the lack of reciprocity available to Palestinian refugees is a cloak used by the Lebanon authorities to mask a discrimination to prevent settlement of a significant number of Sunni Muslims. We think it is right as a matter of principle and of international law, that Lebanon does have the right to regulate the access to and conditions of residence of aliens in its territory. Further, nothing that Mr Blum submitted persuades us that the lack of resources is not a proper justification for any differential treatment experienced by Palestinian refugees. We repeat what was said by the Tribunal in KK, that UNRWA is responsible for the material needs of the Palestinian refugees albeit that it labours under a serious lack of funding. We also repeat and confirm what the Tribunal said in KK about the delicate political balance in Lebanon. Although Mr Blum submitted that civil rights were not dependent on the grant of citizenship or the right to vote, nevertheless the granting of equal access to all of the rights that we have discussed above, must necessarily have an impact on the political balance in the country. In our view this is a matter that the Lebanese authorities were entitled to take into account in relation to how far they are prepared to open up access to these rights to the

Palestinians. We do not think that in this respect the situation is any different from that which was considered by the Tribunal in KK.

143. We turn to Mr Blum's submission that in KK the Tribunal did not consider Lebanon's signature to a number of international agreements. We reject his submission that the application of the principle of reciprocity to Palestinian refugees involves a breach of Lebanon's obligations under these Conventions, because we do not accept that it amounts to indirect discrimination on the grounds of race. Nothing in any of the Conventions to which Mr Blum referred us, excludes justification for actions by a state on the grounds of differential treatment between nationals and non-nationals. We do accept that any differential treatment should be in accordance with internationally recognised human rights norms. Mr Blum referred us to Article 26 of the ICCPR, which provides that signatory states must ensure that the content of its legislation is not discriminatory. We accept that this can apply to both direct and indirect discrimination i.e. that there may be no intention to discriminate in relation to legislation, but it may have a disproportionate or adverse affect on a certain category of persons. Nevertheless, this does not prevent justification, where it is indirect discrimination. The ICESCR specifically provides in Article 2 that developing countries may determine the extent to which they would guarantee the economic rights recognised in the covenant to non-nationals. The Tribunal in KK also referred to this provision. We cannot see that Article 11 is in conflict with what is said at Article 2 (3) of the Convention, in other words Article 11 cannot impose obligations on a signatory state, where they cannot be guaranteed because of lack of resources. The ICERD specifically excludes non-citizens at Article 1(2), and in any event, as we have said, we do not accept that the evidence demonstrates that the Lebanese authorities are engaged in a policy of discrimination against the Palestinians, on the grounds of race. In this regard we agree with Miss Laing that the evidence before us demonstrates that the differential treatment of Palestinian refugees stems entirely from their statelessness, and that the justification for not increasing access of Palestinians refugees to civic rights i.e. lack of reciprocity and lack of resources, is proper and reasonable and is in accordance with international human rights norms. In this regard we adopt and confirm the findings of the Tribunal in KK, and we conclude that Lebanon's obligations under the various covenants to which we have been referred, has no impact on the findings of the Tribunal in KK. We note in any event that KK did consider some of these covenants, as we have mentioned earlier.

144. For these reasons we confirm the decision in KK. We recognise the serious difficulties faced by Palestinians living in the camps in Lebanon. However we conclude that their living conditions and treatment by the Lebanese authorities is not discriminatory on the grounds of race. We further find on the evidence presented to us that it does not reach the minimum level of severity to establish persecution or so as to breach the Article 3 threshold.

The Application for these Findings to the Appellants

The First Appellant

145. The first appellant was found not to be credible in relation to the level of involvement he claimed with Fateh. It is accepted that he was a low level member of the Fateh. No evidence was placed before us that low level members of Fateh face any real risk of persecution on return to Lebanon. We agree with Miss Laing's submission that in the light of the pardoning of the head of Fateh in Lebanon, there is no real likelihood that this appellant will face persecution on account of his membership and in any event, there is no credible evidence that he was of any interest to the authorities on that account when he lived in Lebanon. We accept that the appellant will be returning to very difficult conditions. However for the reasons that we have set out above, this is not discrimination amounting to persecution. We have noted that the appellant has received training as a hairdresser and that this, on the evidence before us, is not a prohibited employment to Palestinians in Lebanon. We see no reason therefore why he would not be able to earn a living in that capacity. In any event, it was his evidence that he was employed as a guard by Fateh in the refugee camp, and so clearly did have employment when he was living there. We conclude that the first appellant has not established that he is entitled to refugee status or that the living conditions to which he would have to return in Lebanon breach either his Article 3 or his Article 8 under the ECHR. We have also considered whether he is entitled to humanitarian protection, and for the same reasons we conclude that no substantial grounds have been shown for believing that he would face a real risk of suffering serious harm because he does not face a risk of torture or inhuman or degrading treatment or punishment on return to Lebanon. As we stated at paragraph 18 (ante), the Article 8 ECHR ground of this appeal was not pursued in relation to the protection of family life.

The Second Appellant

146. The second appellant was found to be wholly lacking in credibility as to his involvement with Fateh. We note from his evidence, which was accepted, that he did work when he was living in the Burj el-Shemali refugee camp, when he was employed as a carpenter. We see no reason, even accepting the difficulties that we have outlined above, why he could not pursue such employment again. We have made a finding, as we have already stated in relation to the first appellant, that the general conditions are not discriminatory such as to amount to persecution. The second appellant's case was based totally on the general conditions. In the circumstances we find that he has not established that he is entitled to refugee status or that there would be a breach of either of his Article 3 or Article 8 ECHR rights on return for the reasons that we have already given. Similarly, we find that he has also not established that he is entitled to humanitarian protection for the same reasons as we gave in relation to the first appellant.

Decisions

First Appellant

147. The original Tribunal made a material error of law.

148. The following decision is accordingly substituted:

The appeal is dismissed on asylum grounds.

The appeal is dismissed on human rights grounds.

The appellant is not entitled to humanitarian protection.

Second Appellant

149. The original Tribunal made a material error of law.

150. The following decision is accordingly substituted:

The appeal is dismissed on asylum grounds.

The appeal is dismissed on human rights grounds.

The appellant is not entitled to humanitarian protection.

Signed
Senior Immigration Judge Nichols

Background Materials Considered By the Tribunal in Chronological Order

1951 Convention Relating to the Status of Refugees

1954 Convention Relating to the Status of Stateless Persons

International Covenant on the Elimination of All Forms of Racial Discrimination 4 January 1969

International Covenant on Civil and Political Rights 23 March 1976

International Covenant on Economic, Social and Cultural Rights 3 January 1976

Finding Means – UNRWA Financial Situation and the Living Conditions of Palestinian Refugee, 2003

International Federation for Human Rights – Investigative International Mission Lebanon – Palestinian Refugees: Systematic Discrimination and Complete Lack of Interest on The Part of the International Community March 2003

Amnesty International, Lebanon, Economic and Social Rights of Palestinian Refugees, 2004

Institutionalised Discrimination Against Palestinians in Lebanon: The National Institution for Social Care and Vocational Training (Report submitted to the United Nations Committee on the Elimination of All Forms of Racial Discrimination) 64th Session of CERD – Geneva February/March 2004

International Covenants on the Elimination of All Forms of Racial Discrimination (CERD): Shadow Report the 14th Periodical Report of State Parties due in 2004: Lebanon, by the Palestinian Human Rights Organisation 2004

Refugee Feature: Palestinian Refugees - A Legacy of Shame UNRWA Press Release UNRWA 3 March 2004

Falling Behind: A Brief on the Living Conditions of Palestinian Refugees in Lebanon March 2005

Palestinian Refugees in Canadian Law and Practice -

The Coalition against the Deportation of Palestinian Refugees C/O QPIRG McGill 2005

UNRWA to Cut Refugee Food Rations: Sources Daily Star Mr Mohammed Zaatari. 18 January 2006

Palestinian Refugees in Lebanon: Longstanding Suffering Amnesty International 17 March 2006

Palestinian Refugees in Lebanon: Longstanding Suffering Amnesty International Palestinians Return Centre 28 March 2006

US Committee for Refugees and Immigrants "Army Surrounds Nahr Al-Bared Camp after Shoot-out between Militants" 22 April 2006

Marginalised Community: the case of Palestinian Refugees in Lebanon – Mr Jabber Suleiman April 2006

Lebanon: Limitations on Rights of Palestinian Refugee Children – Briefing to the Committee on the Rights of the Child 5 June 2006

Lebanon: Discrimination against Palestinians must end. Amnesty International 8 June 2006

Report of Jim Quilty 20 June 2006

Country of Origin Information Report Lebanon. July 2006

Lebanon: the Other Palestinians Le Monde Diplomatique – Ms Marina Da Silva July 2006

OHCHR, Committee on Elimination of Racial Discrimination discusses Humanitarian Crises in Lebanon 3 August 2006

Forced Migration Review Issue 26 Palestinian Displacement: A Case Apart? August 2006

Freedom in the World 2006 Lebanon Freedom House 6 September 2006

Operational Guidance Note Lebanon 20 September 2006

UNHCR Position on the International Protection Needs of Asylum Seekers from Lebanon Displaced as a Result of the Recent Conflict 15 November 2006

US Committee for Refugees and Immigrants World Refugee

Survey 2006

Human Rights Watch World Report	11 January 2007
Human Rights Dilemma of the Palestinian Refugees in Lebanon – Mr Souheil El-Natour, Director of Human Development Centre (HDC), NGO Beirut and Background of HDC	14 February 2007
US State Department Report Lebanon	6 March 2007
Lebanon: Cashed Up Palestinians See Livelihoods Decimated by Security Crisis. IRIN	22 April 2007
Two Dead as Violence Hits Palestinian Camps. Daily Star Lebanon. Mr Mohammed Zaatari	24 April 2007
Lebanon: Refugees Learn to Substitute Government (IPS) Dharj Jamail	2 May 2007
Lebanon: Palestinians Face Siege after Eleven Lebanese Soldiers Killed. IRIN	20 May 2007
Lebanon: Many Dead as Lebanese Army Battles Militants in Palestinian Camp. Voice of America News, Challiss McDonough	20 May 2007
Lebanon: Bombardment May Spark Palestinian Uprising Warn Analysts: IRIN	22 May 2007
Lebanon: Violence Highlights Regional Polarisation (IPS). Ellen Massey	22 May 2007
"A Life of Filth and Poverty in the Crowded Alleys. Refugees have no rights and little hope". World News. The Daily Telegraph. Miss Kitty Logan.	23 May 2007
Lebanon: 30,000 Caught in Crossfire (IPS). Jackson Allers.	24 May 2007
Palestinians Flee Camp during Lull in Fighting between Lebanese Army and Islamic Militants. Voice of America News.	26 May 2007
Lebanon: Aid Agencies Concerned About Security in Camp: IRIN.	30 May 2007
Lebanon: Refugee Resentment Simmers as Fighting Escalates – Inter Press Service News Agency (IPS) Mr Jackson Allers	4 June 2007
Palestinian Refugee Camp. Miss Margaret Basheer. Beirut	4 June 2007

Lebanon: Fears for Thousands of Refugees Caught up in Intense Fighting. Amnesty International Public Statement	5 June
America News. Miss Margaret Basheer.	6 June 2007
Palestinian Refugees in Lebanon Deprived from Basic Rights - Dr Mahmoud El-Ali, Independent Researcher	7 June 2007
Amnesty International Public Statement – Lebanon: Amid reports of harassment at army checkpoints, continuing concern for civilians affected by fighting at Palestinian refugee camp	12 June 2007
The Integrated Regional Information Networks News (IRIN, "Lebanon: Rights for Course of Probing Palestinian Abuse Claims")	20 June 2007
Report of Abbas Shiblak	27 June 2007
CMI Working Paper, the Law, the Loss and Lives of Palestinian Refugees in Lebanon, Are Knudson	2007
Amnesty International Report Lebanon	2007
Background Information Re: the CHR. Mitchelsen Institute	Undated