



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01918/2014**

THE IMMIGRATION ACTS

Heard at Field House

Decision and Reasons

On 6 October 2015

Promulgated

On 22 October 2015

Before

**THE HONOURABLE LORD BURNS
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE GLEESON**

Between

HASSAN MOHAMMED SULEIMAN

aka

MARIO ALTMAN

aka

KHALID SHEHADI

aka

HAMZA M Y SHAMALLAKH

(NO ANONYMITY ORDER)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Malik instructed by Duncan Lewis solicitors

For the Respondent: Mr P Nath, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant says he was born the son of an UNWRA refugee, in a Lebanese refugee camp, in 1979. He appeals with permission against the decision of First-tier Tribunal Judge Chana, who dismissed the appellant's appeal against the respondent's decision to deport him to Lebanon, which

on the appellant's account is one of his two countries of former habitual residence, the other being the Palestinian Occupied Territories.

Appellant's history

2. The appellant's account is that his parents, originally from Gaza in the Occupied Territories, fled to Lebanon in 1967 because of the dangerous conflict in the region at the time. The family lived in three refugee camps in Lebanon over the next 18 years: first in the Bint Jilal camp, then in Rashidieh camp (which was destroyed by Israeli missiles during the time when they lived there), and later in a camp in Sida.
3. When he was 7 years old, the appellant returned with his parents to Gaza, where the family remained until he was 15 (in 1994 or thereabouts). He went to school and made friends. He had three brothers and two sisters.
4. His father decided to take the family back to Lebanon. The appellant's experience there was that first-generation UNWRA refugees who had moved to Lebanon directly in 1948 were better treated and had more rights than his family. Two brothers are now in Brazil, albeit without status, and the third lives in Abu Dhabi. His mother and one sister remain in Gaza: his father has died. The appellant continued studying in Lebanon for a further two years (until 1996) before leaving to visit two of his brothers in Brazil, who are living there without status. It is his understanding that Brazil has no asylum system, so he made no claim there.
5. The appellant arrived in the United Kingdom on 13 March 2001, travelling on a French passport to which he was not entitled. He claimed asylum that day. The asylum claim was refused the next day: the appellant appealed, but he did not attend the asylum hearing because he could not afford to pay his solicitors to represent him and he could not speak English. The appeal was dismissed in his absence.
6. Thereafter, the appellant worked as an office cleaner and kitchen porter, using as his identity document another passport to which he was not entitled. He reported as required until 2007 when his employer became unhappy with the appellant's absences from work to report, so he stopped. He was living in shared accommodation.
7. The appellant has used a number of identities since coming to the United Kingdom: he has presented as a Greek citizen (he could not read Greek); a Lebanese citizen; and he has used two Palestinian identities, one in which he had worked, and one in which this appeal proceeds. The latter name was known to the respondent, who treats him as Palestinian but seeks to remove him to Lebanon, his country of former habitual residence.
8. On 5 June 2008, the appellant was arrested by the police. He gave a false name matching the false passport he used for his work (he also has a bank account in that name). He later gave the police what he now says is his real name.

9. The police searched his home and found 8 forged passports, some with the appellant's photograph, and about 50 credit and debit cards, which were not considered to be anything to do with the appellant. They also took the appellant's original birth certificate. The appellant was sentenced to 2 years in prison for the forged passports. He has not been permitted to work since then. He is supported by his mosque, and by friends.

Respondent's position

10. On 12 December 2008 the appellant was served with notice of liability to automatic deportation pursuant to section 33 of the Borders, Citizenship and Immigration Act 2009. He completed his custodial sentence on 17 June 2009 and thereafter was in immigration detention. On 25 June 2009 he was served with a deportation order, certified under section 94 of the Nationality, Immigration and Asylum Act 2002 with an out of country right of appeal only. On 8 September 2009, the applicant applied to return to Gaza under the Facilitated Return Scheme. A language analysis report on 17 October 2009 found that he spoke a variety of Arabic found amongst Palestinians in Lebanon and Galilee.
11. On 7 December 2009, the respondent wrote to the appellant in detention at IRC Oakington, stating that the Lebanese Embassy had refused to issue him with an Emergency Travel Document and that an interview with the Palestinian General Delegation would be arranged.
12. On 20 September 2011, the Secretary of State made a deportation order against the appellant as a foreign criminal pursuant to section 33 of the Borders, Citizenship and Immigration Act 2009. She acknowledged that he had an asylum claim pending. The appellant made further submissions on 5 March 2010, 2 June 2010, 2 September 2010 and 8 March 2011. He was represented by McLee & Co, solicitors at this stage.
13. In her asylum refusal letter of 11 April 2012, the respondent set out the complex legal position of Palestinians in Lebanon. She noted that through his former solicitors, Pillai Solicitors, the appellant had submitted documents confirming his father's UNRWA registration number and that he was named on his father's registration card, and that his birth certificate confirmed his birth in Rashidieh camp in Lebanon. If returned, she considered that the appellant would be able to register and travel within Lebanon. He was not an undocumented Palestinian and would be able to register with the Lebanese Ministry of Interior's Directorate of Political and Refugee Affairs, giving him the right to travel internally within Lebanon and also as a Palestinian born in Lebanon, to work. The appellant appealed that decision. The first decision of the Immigration Judge (as he then was) is not before us and was not before Judge Chana in the second decision hearing.
14. On 21 September 2011, Mr Naim Samara, Deputy Head of Mission at the Palestinian Diplomatic Mission in London, wrote to the appellant's representatives, McLee & Co, stating that Gaza was under Israeli occupation and Israel had full control over its borders, including entry of Palestinians. Accordingly, the Diplomatic Mission had no authority to assist the appellant

in returning to Gaza. That is not in terms a refusal to recognise him as Palestinian, but a refusal to offer travel assistance or documents to enable the appellant to return there, because the entry of Palestinians to the Occupied Territories is a matter for the Israeli authorities, not the Palestinian Diplomatic Mission.

15. On 2 October 2014, in a further refusal letter, the respondent noted that the appellant now claimed to be stateless. At paragraphs 67-70 of her letter, she said this:

“67. You have stated that your client is not able to return to Lebanon or Palestine and as such he is granted leave due to him being stateless. The Lebanese Embassy have rejected the ETD application made on behalf of your client as they believe the subject to be Palestinian. ...

69. Therefore, your client’s removal is dependent on the Palestinian General Delegation Office accepting him as one of their citizens ...

71. However, it is not accepted that your client is stateless. Rather, it is believed that your client has failed to establish his nationality. Your client has not had his citizenship revoked by the Palestinian Diplomatic Mission, rather that the Palestinian Diplomatic Mission has yet to receive supporting information to be satisfied that your client is accepted as a national of Palestine. As such, your client has not been rendered stateless, rather he has not yet conclusively proved his nationality. ...”

On 7 October 2014, the respondent refused to revoke her deportation order. That is the decision against which the present appeal lies.

16. The appellant subsequently made a formal claim to be recognised as stateless under Part 14 of the Immigration Rules HC 395 (as amended), inserted therein by HC1039 from 6 April 2013, subject to savings for applications made before that date. The definition of statelessness in paragraph 401 of the Rules is ‘a person who is not considered as a national by any State under the operation of its law’. The appellant has yet to receive from the respondent a decision on his statelessness application.

Proceedings before the First-tier Tribunal

17. There was a decision by an Immigration Judge in 2003 which is not on the file and which was not before First-tier Tribunal Judge Chana when she considered the appeal in 2015. It appears that the Judge in that decision, in the absence of the appellant and probably also of his legal representatives, found his account to lack credibility.
18. Nevertheless, Judge Chana considered that she could deduce the contents of that decision from excerpts in the respondent’s refusal letter and treated the negative credibility finding and other matters reflected in the refusal letter as her *Devaseelan* starting point. She too found that the appellant was neither a truthful nor a credible witness.
19. At paragraphs 54-57, the Judge noted that the appellant said he could not return to Lebanon because he did not wish to use false passports again. His

parents had split up, with his father choosing to live in Lebanon and his mother, originally a Lebanese citizen, living in Gaza. Judge Chana considered that the appellant was not stateless and that she was not satisfied that he could not return to Lebanon or that he would face persecution if he did so.

20. The Judge found that the appellant had continued to work unlawfully in the United Kingdom and that his Article 8 ECHR rights did not outweigh the United Kingdom's right to control immigration. She found that the appellant had not made sufficient attempts on his own account to return to Palestine or Lebanon and that, like other Palestinian refugees, he could go to Jordan and either live there, free from persecution, or travel from there to Lebanon or Gaza. It was unclear on what basis the Judge considered that the appellant would be able to enter Jordan to attempt the onward journey to either of those countries. The respondent had not advanced Jordan as a country of either nationality or habitual residence for this appellant, and that formed no part of the appellant's case.

Permission to appeal

21. The appellant successfully sought permission to appeal that decision. Upper Tribunal Judge McGeachy granted permission on all the grounds advanced, but placed particular weight on the Judge's failure to take into account the refusal of both countries to admit him for return, and also her failure to take account of section 117C of the Nationality, Immigration and Asylum Act 2002, as it was arguable that there would be very significant obstacles to the appellant's integration into the country to which he was to be deported, in this case Lebanon.
22. That was the basis on which the appeal came before us.

Upper Tribunal hearing

23. At the hearing today, there was a discussion in which the above history of the various refusals and appeals was established. The First-tier Tribunal Judge had not taken account of the established non-returnability of the appellant to Lebanon, the country to which the respondent sought to return him. We also considered it to be legally erroneous to treat as a *Devaseelan* starting point the credibility finding in the 2003 determination which was not before the Tribunal, albeit quoted in the refusal letter, and which followed a hearing at which the appellant had been neither present nor represented. There were other matters which concerned us, but that was sufficient to establish a material error of law in the First-tier Tribunal decision, without which there can be no onward appeal to the Upper Tribunal.
24. The Tribunal considered, and the parties' representatives at the hearing agreed, that the decision of the First-tier Tribunal cannot stand.

Decision

The First-tier Tribunal's decision is set aside. We remake the decision by allowing the appeal to the extent that it remains before the respondent for a

lawful decision as whether the appellant is stateless or whether there is a country or countries of which he is a national or was formerly habitually resident and in which he is not at risk of being persecuted nor of treatment entitling him to humanitarian protection pursuant to the Qualification Directive or of a breach of Article 3 ECHR.

Anonymity Decision

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. There has been no application for an anonymity order in these proceedings and we make no anonymity order.

Signed

Upper Tribunal Judge Gleeson