Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00392/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 16 August 2018	**On 20 December 2018**

Before

LORD BECKETT SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

H M S
[ANONYMITY ORDER MADE]

Respondent

Representation:

For the appellant: Mr Stefan Kotas, a Senior Home Office Presenting Officer
For the respondent: Mr Ellis Wilford, Counsel instructed by Duncan Lewis & Co,
solicitors

DECISION AND REASONS

Anonymity order
The Upper Tribunal has made an anonymity order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the claimant's appeal against his decision to refuse international protection. The claimant is a Palestinian from the Occupied Palestinian Territories but before coming to the United Kingdom he was ordinarily resident in Lebanon. It is accepted that he is stateless and both of his areas of former habitual residence, the state of Lebanon and the Occupied Palestinian Territories, have refused to readmit him.

2. The claimant is the son of a refugee protected by United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNWRA), and it is accepted that he is named as such on his father's UNWRA registration card. He has supplied to the Secretary of State a number of documents giving him two different dates of birth in March 1975, alternatively in April 1979. It is not now disputed that he is stateless, but the Secretary of State considers that the claimant is not entitled to international protection in the United Kingdom.

3. This is the decision of the Upper Tribunal, to which we have both contributed. Its promulgation has been delayed, for which we apologise. No oral evidence was taken at the hearing.

Basis of claim

4. The claimant appealed to the First-tier Tribunal against the Secretary of State's decision to refuse him leave to remain as a stateless person and/or international protection under the Refugee Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds.

5. He also challenged the Secretary of State's decision to serve him with an automatic deportation order pursuant to section 32 of the Borders, Citizenship and Immigration Act 2009, which he resists under section 33(2) (Exception 1) on the basis that his removal to Lebanon and/or the Occupied Palestinian Territories, if it were possible to effect it, would put him at risk of an Article 3 ECHR breach alternatively breach the United Kingdom's international obligations under the Refugee Convention. The Secretary of State relied only on removal to Lebanon before us.

6. The Secretary of State certified his decision to refuse leave to remain pursuant to section 72 of the Nationality, Immigration and Asylum Act 2002 (as amended), as the claimant was convicted in the United Kingdom of an offence for which he was sentenced to a period of imprisonment of 2 years (section 72(2)), raising a presumption that he is a danger to the community. That certificate is rebuttable under section 72(6), the burden being upon the claimant to show that he is not a danger to the community.

Background

7. The claimant was born in Bint Jlal, a refugee camp in Lebanon, his parents having fled Palestine before he was born. He has three brothers, two of whom now live in Brazil and one in Abu Dhabi. His sisters live in Gaza, as far as he knows, as does his mother. He lost contact with them after the last

war in that area, some years ago, and he is unsure whether his mother is still alive. His father, his paternal uncle, and all his grandparents are dead.

8. While the claimant was growing up, his family lived in three refugee camps in Lebanon: first Bint Jlal, then Rashidieh, until that camp was destroyed by Israeli missiles, while they were living there. The claimant was a young child and found the air attacks on the camp very frightening.

9. The third camp the family lived in was in Sida. His father taught maths there, informally as Palestinians in Lebanon have no right to work as teachers.

10. When the claimant was about 7 years old (so in 1982 or perhaps 1986), the family returned to live in Gaza and remained there until he was approximately 15 years old (1990 or 1994). They lived in another refugee camp there, Jbalia. The claimant was able to attend school in Gaza, but Gaza was occupied by Israeli forces and again, he saw a lot of violence and suffering.

11. When the claimant was about 15 years old, his father decided that the family should return to Lebanon. The claimant's father did not survive to make the journey, but the rest of the family did return to Lebanon where they stayed with one of his father's brothers.

12. Palestinians in Lebanese refugee camps were not allowed to own homes, nor even to make basic repairs to their accommodation to keep them safe. The claimant got into trouble in the refugee camp for bringing in cement during a very cold winter, to undertake urgent repairs to their accommodation, which had a leaking ceiling such that water came in to the living quarters. The Lebanese authorities arrested and detained him: he was beaten in detention. The claimant's unchallenged account is that such beatings were the norm during detention by the Lebanese authorities.

13. In Lebanon, the claimant studied information technology at college: his studies were not UNWRA funded (although they provided some food and cooking utensils). His studies were suspended when a photograph of Yasser Arafat was found on his desk at college. Even if he had been able to complete his studies, the claimant would not have been able to work in IT as Palestinian refugees were excluded from working in professions in Lebanon.

14. The claimant became a member of the pro-Fatah movement in Lebanon and expressed support for Yasser Arafat, becoming a member of the Palestine Liberation Organisation (PLO), attending Arafat-supporting meetings, and guarding their offices at night. People from Hamas and Jihad approached him many times to tell him to work for them instead, threatening to kill the claimant if he did not comply, but although frightened, he stuck to his beliefs.

15. When he was about 17 years old (so in 1992 or 1996) the claimant left Lebanon for good. He did so because of the ill treatment he was receiving in Lebanon and because he had neither rights nor any future in Lebanon. The claimant went to Brazil, travelling through and spending time on the way in

Syria, Turkey and Italy, using a false Brazilian passport obtained for him by the agent. Two of his brothers had already reached Brazil where they were living without status. The claimant made no asylum claim in Brazil as his understanding was that there was no international protection system there.

16. The claimant then travelled to the United Kingdom on a French passport to which he was not entitled. He claimed asylum on arrival, but without disclosing his travels through Syria, Turkey, Italy and Brazil. The claimant arrived in the United Kingdom on 13 March 2001. Asylum was refused and he was appeal rights exhausted on 18 April 2003, having failed to attend his asylum hearing or arrange representation, through a combination of speaking no English and being unable to afford representation. The claimant wrote to the Secretary of State asking for permission to work, a number of times, but the Secretary of State refused.

17. The claimant did not embark, remaining in the United Kingdom unlawfully, using various identities. To survive, he used false documents to work as an office cleaner and a kitchen porter, paying taxes and making national insurance contributions in the false name on a forged passport he had obtained to facilitate working. The claimant used a Greek, a Lebanese, and two Palestinian identities, in one of which he worked, and another, the identity in which this appeal proceeds.

18. The claimant was required to report weekly to the Immigration Officers, beginning when he entered the United Kingdom in 2001. He did so until 2007, when he stopped reporting for fear of losing the job he then had: his employer would not give him permission to be absent from work to comply with his reporting conditions.

19. The claimant was stopped by the police and arrested, initially in his second Palestinian identity, on 5 June 2008. The claimant later gave the name he now says is his correct identity. The police searched his home and found 8 forged passports and a number of credit and debit cards. The claimant took responsibility for the passports but as it was shared accommodation, he denied any responsibility for the credit and debit cards, which seems to have been accepted.

20. On 27 August 2008 and 19 November 2008, the claimant was convicted of possession of false documents with intent and sentenced to 2 years' imprisonment. He did not appeal against either the conviction or the sentence. The claimant served half of his sentence and was then detained in immigration detention for a time. The Secretary of State served a notice of liability to deportation: the claimant responded, but the Secretary of State has lost his response.

21. On 25 June 2009, the Secretary of State signed a deportation notice which was served the following day. The decision was certified under section 94(2) of the Nationality, Immigration and Asylum Act 2002 (as amended), giving him an out of country right of appeal. That decision was revoked on 17 March 2016.

22. On 8 September 2009, the claimant applied to be returned to the Occupied Palestinian Territories (Gaza Strip) under the Secretary of State's Facilitated Returns Scheme (FRS). During investigations ahead of a request for an emergency travel document from the Lebanese Embassy, and then from the Palestinian General Delegation (PGD), language analysis was conducted and it was concluded that the claimant spoke the type of Arabic found among Palestinians in Lebanon and Galilee. The Lebanese Embassy refused to issue an emergency travel document. The claimant cooperated fully with attempts to redocument him for return.

23. The Secretary of State approved the FRS application on 5 January 2010 but on 26 March 2010, following further submissions, the Secretary of State treated the application as withdrawn. On 21 September 2011, the Palestinian Diplomatic Mission stated that they could not assist the claimant to return to Gaza.

24. On 5 March 2010, the claimant's representatives submitted a further asylum, human rights and compassionate grounds application for leave to remain. On 11 April 2012, the claimant's further representations were refused, with an out of country right of appeal. The claimant sought to appeal in-country, but unsuccessfully. That decision was withdrawn on 17 March 2016.

25. On 28 September 2011, the Secretary of State issued a further liability to deport notice. Again, the claimant responded but the Secretary of State has lost his response.

26. On 4 April 2013, the claimant submitted further representations, which were refused with an in-country right of appeal: the claimant exercised that right and on 22 October 2015 his appeal was allowed to the extent that the original decision was not in accordance with law and that his application remained before the Secretary of State for a lawful decision. The Secretary of State withdrew the underlying decision on 17 March 2016.

27. On 7 January 2016, the claimant's representatives wrote to the Secretary of State enclosing a completed UNHCR form and an application to remain in the United Kingdom as a stateless person. The Secretary of State began the process of verifying the claimant's UNWRA status with UNHCR.

28. On 17 March 2016, all previous decisions and the FRS application having been withdrawn, the Secretary of State issued a notice of decision to deport. On 13 December 2016, UNHCR confirmed that the claimant was named as a dependant on his father's UNWRA registration card.

29. On 21 December 2016, the claimant's protection and human rights claims were refused, and the Secretary of State signed a deportation order. His application for leave to remain on the grounds of statelessness was also refused, citing paragraph 322 (1B) of the Immigration Rules HC 395 (as amended) which provides for mandatory refusal of a statelessness leave to remain application when an applicant 'is at the date of application the subject of a deportation order or a decision to make a deportation order'.

30. The claimant appealed to the First-tier Tribunal.

Procedural history

First-tier Tribunal decisions

2003 decision

31. The 2003 decision dismissing the claimant's first asylum application reached no credibility conclusions on the claimant's core account, but dismissed the appeal following a hearing at which the claimant was not present. We have the advantage of a copy of the 2003 decision of Adjudicator Nicholls sitting at Hatton Cross. That decision records that there was no appearance or representation either for the claimant (the claimant here) or the respondent (the Secretary of State).

32. The material passage in that decision is this:

> "11. The [claimant's] claim for asylum must fail on two particular grounds, accepting that he is a credible witness. He claims that he was the subject of some harassment by Hamas because of his support of the Arafat organisation. The conduct he alleges is of a relatively minor nature and although there may have been restrictions on his freedom of movement because of the Rules, both formal and informal, of the refugee camps in Lebanon, the conduct he describes does not in my judgment reach the severity necessary to cross the threshold to become persecution. The incident with the smuggling of cement into the refugee camp appears to be a straightforward breach of the rules which, I assume, the [claimant] would have known. Any reasonable sanction for breach of that rule would constitute a legitimate punishment and I find that a fine or similar penalty would be proportionate. I cannot see in his account of that event any sight that this would constitute conduct sufficiently severe to either itself amount to persecution or to amount to inhuman or degrading treatment under Article 3 of the ECHR. The incident regarding the visit to his aunt is of a minor detention and the careful checking of his identity card. Again, I see nothing in his claim regarding this incident of anything serious enough to amount to persecution. Finally, as the [Secretary of State] noted, the [claimant] was able to leave Lebanon using his own travel document which quite clearly indicates that he was not of serious interest to the Lebanese authorities.
>
> 12. The second significant ground on which his claim fails is that the reason why the [claimant], on his own account, has come to the notice of the authorities do not disclose one of the five reasons under Article 1A(2) of the Refugee Convention. Although there are political elements involved, the only clear political aspect is the [claimant's] claim that Hamas wished to recruit him to their cause rather than leave him to support Arafat. The fact that the [claimant] is a young Palestinian man may well have much more to do with this than any political motive. The complicated nature of relationships within the

> Palestinian political movements are such that I do not find that this attempt at recruitment, even including intimidation, constitutes persecution on account of political opinions. ”

33. The appeal was dismissed on asylum and human rights grounds on 20 January 2003.

2015 decision

34. No copy of that decision was before First-tier Judge Chana when she considered the claimant's second appeal in 2015, deducing the contents of the earlier decision from quotations in the Secretary of State's 2014 refusal letter.

35. Judge Chana treated the 2003 decision as her *Devaseelan* starting point in 2015, but having seen the claimant give evidence, found him neither a truthful nor a credible witness. In so doing, she departed from the *Devaseelan* starting point. She was entitled to do so as Judge Nicholls had not heard oral evidence from the claimant, but Judge Chana had.

36. The claimant told Judge Chana that he could not now return to Lebanon: to do so he would have to use more false documents as the Lebanese authorities had indicated that he would not be readmitted lawfully. His parents had split up, his father remaining in Lebanon and his mother, originally a Lebanese citizen, now living in Gaza. Judge Chana did not find the claimant to be stateless, nor was she satisfied that he could not return to Lebanon or would face persecution if he did.

37. The claimant appealed to the Upper Tribunal, and permission was granted on the basis, inter alia, that Judge Chana had not placed appropriate weight on the express refusal by both the Lebanese and Palestinian authorities to allow the claimant to return to either country.

2015 Upper Tribunal decision

38. On 22 October 2015, the claimant's previous appeal was heard in the Upper Tribunal before Lord Burns, sitting as a judge of the Upper Tribunal, and Upper Tribunal Judge Gleeson. There has been no request for Judge Gleeson to recuse herself from hearing the present appeal. The Upper Tribunal decided as follows:

> "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 [Secretary of State] for a lawful decision as to whether the [claimant] is stateless or whether there is a country or countries of which he is a national, or [where he] 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."

39. The decision of Judge Chana having been set aside by the Upper Tribunal, it is not a *Devaseelan* starting point in the assessment of the present appeal.

First-tier Tribunal decision (2018)

40. First-tier Judge Cockrill heard the present appeal in March 2018. Erroneously, he did not anonymise the claimant in his decision: there is clear Presidential Guidance given by the President of the FtTIAC in 2011 that all asylum appeals should be anonymised at case creation. We have therefore made an anonymity order.

41. The Secretary of State did not cross-examine the claimant, nor any of his witnesses, at the hearing before Judge Cockrill. The claimant's witness statement of 20 February 2018 therefore stood unchallenged, including the description therein that the claimant had been detained and beaten by the Lebanese authorities and threatened by Hamas and Jihad when he would not join them and cease supporting Yasser Arafat.

42. The First-tier Judge began by considering the section 72 certificate. The claimant had been imprisoned for having in his possession 8 passports and using multiple identities to evade removal, at least one of which he used in order to work. The claimant had served his sentence in 2008-2009 and had not re-offended. He had shown contrition The Judge found that the claimant had no lawful means of supporting himself and it was 'perfectly easy to see how he could succumb to that temptation to use false documents to try to facilitate the gaining of work'. The Judge found that the claimant had successfully rebutted the presumption in section 72(2) that he was a danger to the community in the United Kingdom.

43. The First-tier Tribunal noted Judge Chana's decision, but found the claimant's core account to be perfectly credible and reliable and that he had cooperated properly with the attempts made by the United Kingdom authorities to procure an emergency travel document for him. In particular, the Judge noted that the claimant had lived in Gaza with his family between the ages of 7 and 15, which did not appear to have been taken into account by the Secretary of State in his decision.

44. The Judge considered all the evidence, noting that the claimant had provided his birth certificate, that of his father, his Palestine Liberation Organisation (PLO) membership card and his Blue Palestinian card, and that the Secretary of State had accepted that he was a stateless person. It was not suggested that the claimant could go to Palestine now. The Judge noted that the Lebanese authorities were not prepared to re-admit the claimant, a stateless person who was now unwelcome there. The claimant, therefore, was no longer excluded from protection because he was under UN protection as an UNWRA dependent, because he could not reach Lebanon to access that protection. The Judge found that the claimant had an automatic right to refugee status.

45. As regards human rights, the claimant had been in the United Kingdom now for about 17 years, and is now either 43 or 39 years old. The claimant

had some limited mental health difficulties but the major point was that he could not in practice be removed anywhere and that he was stateless. The section 72 presumption was rebutted.

46. The First-tier Judge allowed the appeal. The Secretary of State appealed to the Upper Tribunal.

Permission to appeal

47. The Secretary of State's grounds of appeal noted the basis of the claimant's subjective fear as his claimed membership of the pro-Fatah movement and his having previously 'got into trouble' for possessing cement in a refugee camp in Lebanon. The Secretary of State contended that the decision failed to take account of earlier First-tier Tribunal decisions which were a relevant *Devaseelan* starting point and 'failed to engage with the reliability of the [claimant's] narrative'.

48. The Secretary of State contended that the decision of the Court of Justice of the European Union in *Abed El Karem El Kott and others v Bevandorlasi es Allampolgarsagi Hivatal* [2012] EUECJ C-364/11 (inadequately and erroneously cited in the grounds of appeal simply as *El Knott Case C-364/11*) was not dispositive of the appeal because the First-tier Judge had not found that UNWRA assistance to the claimant had ceased, nor that it was impossible for that agency to carry out its mission. The First-tier Judge's conclusion that the claimant remained at risk of serious harm was challenged on the basis of the Secretary of State's challenge to the claimant's narrative, on which the Home Office Presenting Officer had not cross-examined at the hearing.

49. Finally, the Secretary of State contended, in reliance on *MM and FH* (Stateless Palestinians, *KK, IH, HE* reaffirmed) Lebanon CG [2008] UKAIT 00014 (again, inadequately cited in the grounds) that differential treatment of Palestinians by the Lebanese authorities did not reach the level of persecution or an Article 3 ECHR breach; the Secretary of State argued that if in possession of an emergency travel document, the claimant as a Palestinian formerly habitually resident in Lebanon would be able to return there without a real risk of serious harm, and that the First-tier Tribunal's reasoning to the contrary was materially flawed.

50. Permission to appeal was granted on the basis that it was arguably wrong in law for the First-tier Tribunal to have accepted as credible the claimant's account, which had been rejected in the Chana decision, and that in general, the evidence 'did not show that the UN mission was unable to carry out its function and evidence showed that a Palestinian habitually resident in Lebanon could return on an emergency travel document'. The grant of permission continued:

> "4. The failure to engage with the previous decision and to explain what led to a different conclusion is arguably an error affecting the whole decision. The findings of the Judge involve virtually no discussion of the evidence or an explanation for the findings made

and do not show an engagement with the case law and the [claimant's] history. …"

51. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

52. At the Upper Tribunal we heard oral submissions and received skeleton arguments, which are recorded in our notes of the hearing. The parties' arguments have been set out in the recital above.

Analysis

53. The first question for the Upper Tribunal is what was the *Devaseelan* starting point in this appeal, and secondly, whether the Judge was entitled to depart from such *Devaseelan* starting point. Beginning with the *Devaseelan* starting point, the only decision left unchallenged after the Chana decision was set aside on 22 October 2015 was the 2003 decision, made in the absence of the claimant and Secretary of State, in which the claimant's account was taken at its highest and no credibility finding made.

54. The 2003 decision dismissed the appeal for two reasons, first because the two detentions relied upon (one over the cement incident, and one because he tried to visit a prohibited area to see his aunt) were brief and did not involve any physical abuse. The unchallenged evidence before the First-tier Tribunal in the present appeal differs from that account in that the claimant says he was ill-treated in the cement detention. That is a proper basis for *Devaseelan* divergence.

55. The second reason why the 2003 appeal failed was that Adjudicator Nicholls did not consider that Hamas trying to recruit the claimant, a supporter of Arafat, even using intimidation, was capable of engaging the political reason in Article 1A(2). We find that conclusion very difficult to understand and to the extent that First-tier Judge Cockrill diverged from the 2003 reasoning in this respect, we consider that he was entitled so to do.

56. We are satisfied that Judge Cockrill gave proper reasons for reaching positive conclusions as to fact and law: he weighed all the evidence with care and reached proper, intelligible and adequately reasoned conclusions on credibility and fact.

Statelessness

57. The statelessness provisions in the Immigration Rules relevant to this appeal are at paragraphs 401- 404 with paragraph 322(1B) thereof. The definition of a stateless person is at paragraph 401:

> "401. For the purposes of this Part a stateless person is a person who:
> (a) satisfies the requirements of Article 1(1) of the 1954 United Nations Convention relating to the Status of Stateless Persons, as a person who is not considered as a national by any State under the operation of its law;

(b) is in the United Kingdom; and
(c) is not excluded from recognition as a Stateless person under paragraph 402."

It is not now contended that any of the paragraph 402 exclusions apply to this claimant.

58. The requirements for limited leave to remain as a stateless person are set out at paragraphs 403 and 404:

"403. The requirements for leave to remain in the United Kingdom as a stateless person are that the applicant:
(a) has made a valid application to the Secretary of State for limited leave to remain as a stateless person;
(b) is recognised as a stateless person by the Secretary of State in accordance with paragraph 401;
(c) is not admissible to their country of former habitual residence or any other country; and
(d) has obtained and submitted all reasonably available evidence to enable the Secretary of State to determine whether they are stateless.

404. An applicant will be refused leave to remain in the United Kingdom as stateless person if: … (c) their application would fall to be refused under any of the grounds set out in paragraph 322 of these Rules."

59. The First-tier Judge correctly held that the claimant could not avail himself of the provisions of the Rules regarding stateless persons because his circumstances brought him within paragraph 322(1B) of the Rules, one of the mandatory grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom are to be refused:

"(1B) the applicant is, at the date of application, the subject of a deportation order or a decision to make a deportation order;"

Accordingly, although stateless, the claimant is not entitled to be granted limited leave to remain under the Rules.

60. The Secretary of State having accepted that the claimant is stateless, the First-tier Judge found as a fact that he had obtained and submitted all reasonably obtainable evidence to assist the Secretary of State in making that assessment. The evidence before the First-tier Judge, consistently since 2014, was that neither Lebanon nor the Palestinian Authority were prepared to readmit him. The decision of the Court of Justice of the European Union in *El Kott* is binding on this Tribunal. In that decision, the Court held as follows:

"1. The second sentence of Article 12(1)(a) of Council Directive 2004/83/EC of 29 April 2004 … must be interpreted as meaning that the cessation of protection or assistance from organs or agencies of the United Nations other than the High Commission for Refugees

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

2. The second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that, where the competent authorities of the Member State responsible for examining the application for asylum have established that the condition relating to the cessation of the protection or assistance provided by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) is satisfied as regards the applicant, the fact that that person is ipso facto entitled to the benefits of [the] Directive means that *that Member State must recognise him as a refugee within the meaning of Article 2(c) of the Directive and that person must automatically be granted refugee status,* provided always that he is not caught by Article 12(1)(b) or (2) and (3) of the Directive."

[*Emphasis added*]

The claimant's account does not engage the Article 12 exclusions.

61. The claimant relied before the First-tier Tribunal on *El Kott* and on *Bolbol (Area of Freedom, Security & Justice)* [2010] EUECJ C-31/09 (17 June 2010), which held that:

> "For the purposes of the first sentence of Article 12(1)(a) of Council Directive 2004/83/EC of 29 April 2004 … a person receives protection or assistance from an agency of the United Nations other than UNHCR, when that person has actually availed himself of that protection or assistance."

62. The First-tier Judge found as a fact that this claimant left the protection of UNWRA in Lebanon because of the cement incident and the harassment by Hamas and Jihad, and that he could, therefore, no longer benefit from UNWRA protection or assistance and was entitled to refugee status. That finding was open to the Judge on the unchallenged evidence before him.

63. Even if that finding were erroneous, the appeal would have succeeded. The claimant cannot be deported if there is no country which will accept him, and that is not in dispute in this appeal. The Secretary of State has tried both Lebanon and Palestine, and both have refused to issue an emergency travel document. The contentions in the grounds of appeal

about what *might* happen, if an emergency travel document were available, are immaterial on the facts of this appeal.

64. There is no material error of law in the decision of the First-tier Tribunal, which we uphold.

DECISION

65. For the foregoing reasons, my decision is as follows:
The making of the previous decision involved the making of no error on a point of law
We do not set aside the decision but order that it shall stand.

Date: 13 December 2018 Signed Judith AJC Gleeson
Upper Tribunal Judge

Gleeson