AB and others (Risk- Return – Israel Check Points) Palestine CG [2005] UKIAT 00046

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 6 September and 15 November 2004
Date Signed: 6 January 2005
Date Determination Notified: 1 February 2005

Decision reserved

Before:

Mr J Barnes - Vice President
Mr L V Waumsley - Vice President
Mr J G Macdonald (First Day Only)

Between

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

For the First Appellant:	Mr B Tattersall of Counsel, instructed by Noden & Company Solicitors
For the Second Appellant:	Mr J Middleton of Counsel, instructed by Bolton and District CAB
For the Third Appellant:	Mr J Rene of Counsel instructed by MacLaren Britton, Solicitors
For the Respondent:	Mr L Parker, Home Office Presenting Officer

1. These appeals have been heard jointly because they concern the essential issue of whether there is a real risk of persecution of a returned failed asylum seeker of Palestinian ethnicity from the Occupied Territories at

the point of return when he will have to pass through a checkpoint manned by the Israeli Authorities in order to regain the West Bank or the Gaza Strip as the case may be. In the present appeals the first and second Appellants were formerly resident in the West Bank and the third Appellant was formerly resident in the Gaza Strip. The hearing on 6 September concerned only the first and second Appellants. The appeal of the third Appellant was initially listed for hearing before Mr D Allen and Mr Barnes on 23 September 2004. Mr Rene indicated that he wished to call oral expert evidence of Dr Azzam Tamimi and that application was granted. By consent that hearing was adjourned to enable the third Appellant's appeal to be listed for hearing jointly with the appeals of the first and second Appellants on 15 November 2004, the date to which their appeals had been adjourned on 6 September as appears later in this determination. At the hearing of 23 September 2004 the removal directions in the case of the third Appellant were formally amended by Mr Elks, the Presenting Officer, to Gaza in the Occupied Territories.

2. The first Appellant was born on 18 August 1971 and claims to have entered the United Kingdom clandestinely by lorry on 4 January 2002. He came to the attention of the Asylum Directorate when he applied for asylum on 9 January 2002. Following the submission of a Statement of Evidence Form and an interview with a further written statement, his application was refused by the Secretary of State for the reasons set out in a letter dated 23 May 2003. On 15 August 2003 the Secretary of State issued directions for his removal to the 'Palestinian authority (West Bank)' as an illegal entrant after refusal of his asylum application. He appealed against that decision on both asylum and human rights grounds and his appeal was heard on 29 September 2003 by Mr James R Devittie, an Adjudicator, who did not believe his core account although he accepted that he was of Palestinian ethnicity and formerly resident in the West Bank. He therefore dismissed the asylum and human rights claims made by the first Appellant. He then sought and was granted permission to appeal to the Tribunal both against the adverse credibility findings made by the Adjudicator and on the basis that it was arguable that any possible risk to the Claimant, if he were returned via Israel, had not been adequately addressed.

3. The second Appellant is also of Palestinian ethnicity although he was born in Kuwait where his family had moved but they were forced to leave Kuwait in the aftermath of the first Gulf War in 1991 and then returned to and lived in the West Bank of the Occupied Territories. The second Appellant arrived in the United Kingdom on 12 February 2001 and claimed asylum on arrival. Following an initial interview, the submission of a statement of additional grounds and a further interview at which his passport issued by the Palestinian authority was produced, his application was refused by the Secretary of State for the reasons contained in a letter dated 15 September 2003. On 23 September 2003 the Secretary of State

gave notice of his intention to remove him also to 'the West Bank (Palestine)' following refusal of leave to enter after refusal of his asylum application. He too appealed against that decision on both asylum and human rights grounds and his appeal was heard on 10 December 2003 by Ms Geraldine McLachlan, an Adjudicator. She found that the Appellant had not been targeted for persecution because of his ethnicity or his religion by the Israeli forces and that he had no political involvement in the West Bank although she accepted that one of his brothers was involved in an anti-Israeli political group there and was proactive in violence against the Israelis. But, the Israeli forces did not hold the Appellant in detention and nor had they subjected other members of the Appellant's family to questions about his brother's activities. There had been a random attack by a Jewish settler some two and a half years prior to his departure but the Adjudicator found this was not a matter in respect of which he had sought protection either from the Palestinian Authorities or the Israeli Authorities and it had played no part in his decision to leave the West Bank. There was no evidence to support a claim that he would be of adverse interest to the Palestinian Authorities or any of the political groups in the West Bank if returned. The Adjudicator found that he had come to the United Kingdom for economic betterment and had had no well-founded fear of persecution. She concluded that he could be returned without risk of persecution either at the point of entry or within the West Bank and dismissed both his asylum and human rights claims.

4. The second Appellant also sought permission to appeal to the Tribunal which was granted on the ground that the Adjudicator had not properly dealt with the issue of his safety at the point of return. In the case of the second Appellant, therefore, that is the only issue before us.

5. The third Appellant was born in Gaza in the Occupied Territories on 14 July 1980. He does not know where his mother is or the identity of his father. He was brought up there by Fatima Tissera who decided to go to Egypt when the Appellant was 13 years old and took him with her. After six months or so she said she could no longer afford to support him and since then he has lived variously and unlawfully in a number of European countries, doing odd jobs to support himself. Some six months prior to his arrival in the United Kingdom illegally on 19 December 2000, he had gone to Spain to which he was returned on the same day. The Spanish Authorities, however, refused to accept him back and returned him to the United Kingdom on 23 December 2000 when he applied for asylum. After two interviews in January and June 2001, that application was finally refused by the Secretary of State for the reasons set out in a letter dated 7 November 2003. On 14 November 2003 the Secretary of State issued directions for his removal to 'Israel'. He appealed against that decision on both asylum and human rights grounds and his appeal was heard on 10 February 2004 by Mr E A W Jones, an Adjudicator. He accepted the Appellant's history but

found that he had no well-founded fear of persecution or of treatment in breach of his protected human rights in Israel or, indeed, in Egypt, Italy, France or Spain in all of which countries he had lived for some time. The Adjudicator found that the Appellant was a 'national of Palestine resident in Israel' and so was not stateless. He dismissed his appeal. The Appellant sought and was granted permission to appeal to the Tribunal by Mr Waumsley. The grant of permission was in the following terms:

> "The grounds on which the Claimant seeks permission to appeal may be summarised as follows:
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> (i) as a stateless Palestinian, he would not be allowed to re-enter Israel, the country of his former habitual residence;
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> (ii) the Adjudicator erred in concluding that the only risks which would face the Claimant on return to Israel are those associated with a state of civil war;
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> (iii) the Adjudicator failed to give proper consideration to the expert evidence which was before him;
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> (iv) the figures quoted by the Adjudicator at paragraph 17 of his determination for the number of Palestinians killed between September 2000 and June 2003, and for the number of Palestinians resident in the Occupied Territories are incorrect.
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> With respect to the Adjudicator, there are aspects of his determination which give rise to legitimate concerns as to the correctness of his conclusion. In particular, in the first sentence at paragraph 16 of his determination, he has stated, 'I find that he [the Claimant] is a national of Palestine resident in Israel so is not stateless'. In light of the fact that Palestine is not a country or territory recognised under international law, and is therefore not capable of conferring nationality, and that by the Claimant's own account, he was resident prior to his departure in the Gaza Strip in the Occupied Territories, not in the State of Israel, the Adjudicator's conclusion that the Claimant is not stateless is questionable, to put it at its lowest.
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> In addition, it appears from the Adjudicator's comments set out in paragraph 16 of the determination that he has misunderstood the effect of the decision of the House of Lords in *Secretary of State for the Home Department v Adan* [1998] Imm AR 338, [1998] INLR 325.
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> In light of the concerns caused by these aspects of the Adjudicator's determination, I am persuaded that this is a fit case in which to grant permission to appeal generally."

6. Returning to the claim of the first Appellant, it was his case that in July 1999 he met and began a relationship with an Israeli girl and that this placed him in difficulties with Fatah and his father. In January 2000 when the Intifada was declared Fatah had called upon all Palestinians to join in the uprising and a prominent member of Fatah named Rashid came to the Appellant's home and asked him to join the Intifada. The Appellant told him that he had no political affiliation but would consider the request and there the matter rested until in April 2001 his father informed him that Fatah knew about his relationship with the Israeli girl and put pressure on him to bring that relationship to an end. The Appellant said he did as his father requested. Following the assassination of the Israeli Tourism Minister in October 2001 the Israeli Defence Forces raided the Appellant's family home looking for weapons, but found none. They then left. Later that night Rashid came to the house and accused the Appellant of causing the arrest of a Palestinian fighter and of being able to gain entry with ease to the Israeli settlements to see his girlfriend. He told the Appellant that he had managed to defer a decision by a senior member of Fatah to arrest him, again called upon him to prove his patriotism by joining the Intifada and said that he would return in a few days. This occurred, according to the chronology produced, on 24 October 2001 and nothing further then ensued until 20 November when Rashid again returned and accused the Appellant of being a traitor who would be reported as a collaborator because he was involved with an Israeli woman and had been seen entering an Israeli settlement without being stopped. On 25 November 2001 his father told him that he would take his life rather than leave it to Fatah to do so and the Appellant left home and went to the house of a friend by whom arrangements were made for him to leave the Occupied Territories for Jordan which he did on 26 December 2001. Although the chronology claims that the Appellant hid with his friend, a local trader, from 25 November until his departure that is not an assertion which was made either at interview or in either of the two written statements filed on behalf of the Appellant.

7. The Adjudicator did not believe the first Appellant's claims and he gives his reasons for that conclusion at paragraph 4 of his Determination in the following terms:

> "4. I deal firstly with the credibility of his account. I do not believe his evidence. I set out my reasons below:
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> (a) The appellant claims that Rashid was a high standing member in Fatah and that he was the one exerting pressure on him to join. It is his evidence that Rashid first approached him in January 2001 and then he approached him again in October of that year. On these two occasions he did not express a willingness to join. He says that

Rashid approached him again in October and then in November 2001. On the latter occasion he accused him of being a traitor. There is no reason that readily suggests itself from the appellant's evidence as to why a relatively senior figure in Fatah, as Rashid was, should devote so much time for such a long period in trying to coax the appellant into joining Fatah. The objective evidence, in particular the US Department of State Report shows that the Intifada was a popular uprising amongst the youth. It does not therefore seem likely that the appellant would have been the object of such a sustained and patient effort at recruitment by senior persons in Fatah. He does make the suggestion in his interview that his matter was even brought to the attention of persons of higher seniority than Rashid. He says that Rashid told him this. On the evidence before me it is not clear what qualities or background the appellant had that would have caused Rashid to pursue the appellant with such single minded resolve.

(b) The appellant claims that at their last encounter Rashid seemed to accuse him of having informed the Israelis about a Fatah combatant. He said he was accused of being a traitor. He states that in this regard it was pointed out to him that he had been observed passing checkpoints without apparent difficulty in the company of an Israeli girl. On the face of it these were serious allegations being levelled at him. It would seem unlikely therefore that if Rashid believed him to be a traitor he would at that same encounter have still sought to persuade the appellant to join Fatah. It is possible of course that Rashid was merely seeking to intimidate the appellant and that in truth he had no basis to believe that he was a traitor. That however is not what the appellant claims. On the contrary the appellant claims that Rashid mentioned the appellant's liaison with the Israeli girl in support of his view that the appellant was a traitor. The objective evidence speaks of the Palestinians inflicting serious harm on those considered to be collaborators. The appellant's account therefore is not consistent with what is known about how Palestinians treat persons viewed as traitors to their cause.

(c) The objective context makes it unlikely that Rashid would have accused him of being a traitor and then sought to persuade him to join the Fatah. There is no reason that the appellant suggests why Rashid would have treated him with such leniency. I do not therefore believe that Rashid told him that he had intervened on more than one occasion to prevent his arrest.

(d) The appellant does not say that he decided to flee after the very serious threats made by Rashid. Having regard to what is known about treatment meted out to persons regarded as collaborators the

appellant would if his account were true, have taken flight immediately after Rashid had left. He does not say that he did. What he does say is that he fled only after his father told him that he would rather kill him than allow the Fatah movement to do it.

(e) The appellant's evidence is that he had a committed relationship with the Israeli girl and that it seems it was strong enough to withstand the strained relations between Arabs and Jews. He states that he has not maintained contact with his girlfriend. I am satisfied that if his evidence were true he would have maintained contact with her because he has not offered a credible explanation why he is no longer in contact with her."

8. Before us, Mr Tattersall relied on the grounds of appeal upon which he expanded in oral submissions. These assert that because the Secretary of State was not represented before the Adjudicator and because there was no direct challenge to credibility in the Reasons for Refusal Letter, the Adjudicator erred in law by failing to raise with the Appellant the issues upon which he subsequently found his testimony not to be credible. We have carefully considered all that Mr Tattersall said on behalf of the Appellant in this respect but an appeal will lie only if there is a material error of law on the part of the Adjudicator in reaching his adverse credibility findings. Mr Tattersall is clearly wrong in submitting that the Reasons for Refusal Letter does not challenge the credibility of the Appellant. It does so in clear terms at paragraphs 13 to 17 of the letter. Paragraph 13 challenges the likelihood that Fatah would seek to coerce an individual into its ranks by threatening them with prosecution for collaboration; paragraph 14 points out that collaboration is viewed very seriously and attracts capital punishment from the Palestine National Authority and that the fundamentalist groups present in Palestine deal viciously with those who have been denounced as collaborators; for those reasons the Secretary of State did not believe the sequence of events given by the Appellant; at paragraph 16 he considered the claimed threats by his father in late November to be irrational for someone who had been aware of the claimed relationship, which he had persuaded the Appellant to finish, several months before; further he did not accept that a refusal to fight for Rashid's group would represent an insult in the eyes of a father who himself had no connections to politics. For those reasons the Secretary of State said he did not accept those parts of the Appellant's account as credible and these matters go, of course, to the core elements of the Appellant's claim.

9. Mr Tattersall also made the somewhat surprising submission that the proper course for the Adjudicator to follow was first to consider the Appellant's case against the objective evidence on an assumption of credibility but that he had wrongly considered credibility as an end in itself, had indulged in speculation in his reasoning and had failed to give the

Appellant an opportunity to answer the points although it was also part of his case that those issues which required a consideration of the behaviour of Rashid would not have been capable of being answered by the Appellant in any event.

10. In arriving at his conclusions there is in our view nothing to suggest that this experienced Adjudicator did not fully consider the Appellant's claims on the totality of the evidence. It is clear that the Adjudicator did consider the objective evidence as is apparent from what is said at the end of paragraph 4(b) of the Determination. All the points which the Adjudicator has taken are obvious ones on the face of the evidence. We do not consider that there was any unfairness to the Appellant and, indeed, Mr Tattersall made it clear that when he represented the Appellant before the Adjudicator he had raised in evidence-in-chief the issues which had concerned the Secretary of State and that the Adjudicator had asked questions to clarify points. The Adjudicator is entitled to draw inferences from the body of the evidence before him and that is, in our view, what he has done in the present case. Whilst it may be that another Adjudicator would have come to different conclusions, that is not of itself sufficient to support the assertion that the Adjudicator has made a material error of law in his approach to the evidence. We do not consider that he has but that, on the contrary, he has reached fully reasoned findings which were properly open to him on the evidence. We bear in mind the limitation on issues which can now be taken into account by the Tribunal as explained by the Court of Appeal in *CA v SSHD [2004] EWCA Civ 1165*. In our view there is no such material error of law as would entitle the Tribunal to reopen the adverse credibility findings of the Adjudicator.

11. The second issue which was common to all three Appellants was whether the Adjudicators had erred in their approach to risk on return at the point of entry.

12. In the case of Massoud there was a letter of 10 December 2003 from the Country Information Officer in the Immigration and Nationality Directorate before the Adjudicator on the subject of return of Palestinians to the Palestinian Authority. He had been asked whether it was possible legitimately to return a resident of the Palestinian authority controlled areas without the need to cross an Israeli entry point and stated that the Israelis control all access and egress points for these areas and as a result would have control on all movements. The writer was not aware of any exception to that process. Although this information was not available to Mr Devitte in the case of the first Appellant, it nevertheless had a bearing upon his reasoning in relation to this issue which is contained at paragraph 7 of his Determination in the following terms:

"I turn now to consider whether the practical difficulty related to the route through which he would be returned would expose him to persecution. The contention advanced by appellant's counsel is that the appellant would risk persecution if he were returned through Israel. My attention was drawn to the objective evidence on the severe restrictions of movement of Palestinians in the Occupied Territories. It is claimed that this appellant would be suspected of subversive activity and would be liable to interrogation were he to be returned. It is a matter of some regret that apart from the rather general observations in the US report there has not been placed before me any objective evidence that deals in specific terms with the risk that a person in appellant's position would face in seeking to return through Israel. My own research has not yielded much results.

I do not consider it necessary to decide this point because it is my understanding that as a matter of practice the Home Office would not seek to return appellant thought Israel [obviously an error for 'through'] if that posed serious difficulties. It would seem to me that can return [sic] through Jordan. In all the circumstances therefore I find that this appellant can safely be returned to the West Bank. I am satisfied too that his return would not expose him to conditions that would breach Article three."

13. In that appeal, as in that of the second Appellant, the Adjudicator did not have any assistance by way of representation from the Secretary of State, a situation which is regrettably only too common. Since it was the Secretary of State who was proposing to remove the Appellants and presumably knew how he intended to do so, such absence of representation was particularly unfortunate.

14. Nevertheless, we are satisfied that the Adjudicator did make a material mistake of law in his approach to the question of risk on return. His attention had been directed to the question of whether a risk would ensue if the first Appellant were returned through Israel but the Adjudicator concluded it was not necessary to decide that point because he believed that a return could be effected through Jordan directly to the West Bank and, although he did not say so in terms, obviously in the belief that there would then be no point at which the Appellant would come into contact with the Israeli Authorities. As we know from the Respondent's own evidence in the case of the second Appellant, that is an error of fact. The material error of law on the part of the Adjudicator is that there was no evidential basis before him to which he refers to support the finding that he made in relation to return through Jordan and for that reason we are satisfied that his findings in this respect are unsustainable as a matter of law.

15. As we have noted, a similar issue was raised before Ms McLachlan on behalf of the second Appellant and she deals with it in these terms at paragraph 17 of her Determination:

> "I have considered carefully what real risk is faced by the appellant by his return to the West Bank. The letter from the Respondent dated 10/12/03 makes it plain that the Israelis control all entry and exit points into Palestinian-controlled areas. Thus, it is argued, the appellant may be detained and ill-treated by Israeli security forces when subjecting him to interrogation upon his return. It is argued that he does not have a valid passport. In fact, the appellant has indicated that he does have a Palestinian passport but he left it at home with his family when he departed for the United Kingdom. The respondent habitually undertakes to ensure the return of failed asylum seekers in a safe manner. The Israeli Authorities would be well aware of the adverse economic impact upon the Palestinian population and the recent restrictions on their freedom to move and work and in any event there are many millions of Palestinian refugees throughout the Middle East. Economic migration is common throughout the region and elsewhere. I have found that this appellant is of no adverse interest to the Israeli Authorities and I do not consider there is a real risk of him suffering detention and ill-treatment at the hands of the Israeli Authorities upon his return. I conclude that the respondent's decision is not a breach of the law or the obligations of the United Kingdom under the European Convention."

16. It was Mr Middleton's submission that the Adjudicator had erred in law in that reasoning. A copy of the Appellant's passport had been produced to the Secretary of State and on the face of it it expired on 23 November 2002 almost a year prior to the hearing before the Adjudicator. He did not therefore have a current valid passport whether in the West Bank or in the United Kingdom. There was a wealth of objective evidence before the Adjudicator that at checkpoints there was a real risk of ill-treatment so that to that extent the Adjudicator had failed properly to assess the objective evidence before her on the issue of the general treatment of Palestinians at checkpoints manned by the Israeli Authorities. Finally, and most importantly, the Adjudicator appeared to have relied upon the fact that the Respondent would not return the Appellant unless it could be done safely and made reference to habitual undertakings in that respect. There was, however, no evidence before her to support that finding and, indeed, no Presenting Officer before her who could have enlightened her as to whether such an undertaking was given in the case of the second Appellant. Mr Middleton made the submission that there was no evidential basis upon which the second Appellant could show that he had left the Occupied Territories lawfully and that the Adjudicator's

approach was fundamentally flawed by placing reliance on the ability of the Secretary of State to ensure a return "in a safe manner." Her findings in this respect were speculative and not based upon the objective evidence before her.

17. We are similarly satisfied that the approach of the Adjudicator in the Determination of the second Appellant's appeal was fundamentally misconceived for all those reasons and that her reliance upon her understanding of undertakings available from the Secretary of State as to safe return had no evidential basis whatsoever to support it. The issue before her was to enquire whether, on the totality of the evidence, such a safe return could be effected and she had failed to provide a properly reasoned decision on that vital issue. As a matter of law we were therefore satisfied also that in the case of the second Appellant the Adjudicator's decision on this point was unsustainable.

18. The first and second Appellants therefore succeeded before us to the extent of raising an arguable issue for the Tribunal to consider on the basis of the current objective evidence. For that reason it would be appropriate for us to take into account the report of Mr Joffe now filed and served on behalf of the second Appellant and it was incumbent upon the Secretary of State to provide further evidence as to the method of return to be employed so that consideration could be given to the issue of risk on return. Mr Parker had made certain statements to us on the basis of instructions which he had sought during a short adjournment which were pertinent to this issue but which could not, of course, be received as evidence by us on the first day of the hearing.

19. For these reasons we adjourned the appeals of the first and second Appellants part heard to a date to be fixed in order to give all parties the opportunity to file and serve relevant evidence upon which they relied as to risk on return and issued directions to enable the appeals to proceed.

20. As we heard no evidence or submissions on the substantive issue but simply on the preliminary issue of whether there was a material error of law on the part of the Adjudicators enabling us to consider the appeals further, it was agreed by all parties that if, for operational reasons, it proved impossible to reconvene a panel including Mr McDonald, there would be no objection to the hearing proceeding before the Chairman and Mr Waumsley at the adjourned hearing.

21. As we have noted at paragraph 1 above, the appeal of the third Appellant had been adjourned to enable it to be listed for hearing jointly with the appeals of the first and second Appellants at the adjourned hearing which was subsequently fixed for 15 November when the hearing of all three appeals proceeded before the Chairman and Mr Waumsley only.

We had previously granted leave to the third Appellant to call Dr Tamimi to give oral evidence and it was agreed by consent that his evidence should be taken into account so far as appropriate in our consideration of the appeals of the first and second Appellants also. In those appeals we had issued directions at the end of the first day's hearing requiring the Secretary of State to file and serve a statement as to the method of return to the West Bank in the Occupied Territories which he adopts and any further evidence relied upon as to the provision of travel documents for failed asylum seekers otherwise without current valid travel documents. Without prejudice to the generality of that direction, we required the Secretary of State also to deal with the following matters so far as within his knowledge, namely:

(a) the numbers of returns which have been effected whether by the Respondent or other countries and the result of such returns so far as is known with particulars of any evidential sources for providing information as to post-return events;

(b) whether it is accepted (as per the evidence of Mr Joffe) that in addition to any documents from the Palestine Authority an Israeli transit visa permitting re-entry to the Occupied Territories is required and whether routinely available as part of the return travel documents;

(c) whether, and if so, how many applications for travel documentation are granted and how many rejected.

22. The first and second Appellants were then given leave to file and serve any additional evidence in rebuttal upon which they would seek to rely at the adjourned hearing.

23. There has been a very limited compliance with those directions on the part of the Secretary of State. He has filed the witness statements of Clare Heaney and Neil Pole who are both described as Chief Immigration Officers, the former at the Immigration Service Document Unit and the latter at the Immigration Service Removals Strategy and Coordination Unit. Ms Heaney states that the first unit was established in 1998 and is responsible for assisting operational Immigration Officers in organising and facilitating provision of travel documents to enable removal of those who have no lawful basis for remaining in the United Kingdom but who do not hold valid travel documents. It has the responsibility for negotiating with foreign embassies and High Commissions in order to establish agreed procedures for obtaining travel documents and for liaison with consular officials in order to resolve individual documentation cases. She says this in relation to the position of Palestinians:

> "The re-documentation procedures in respect of Palestinians are as follows. In the case of persons who previously held Palestinian Authority Travel Documents, issued for residents of Gaza and Jericho, the individual is requested to attend the Palestine General Delegates Office in London in person to apply for a document and for any relevant documents to be verified. The individual applicant must then send these documents to a family member in Palestine for production at the Ministry of the Interior, after which an Emergency Travel Document may be issued by the Palestinian Authority. The Emergency Travel Document will then be sent to the authority's office in the UK. The Palestine General Delegates Office in London is unable to accept applications other than those made by the individuals themselves."

Mr Pole's statement says that the Central Booking Unit within the Immigration Service is responsible for the procurement of tickets for public expense removals and for liaison with the Immigration and Nationality Departments' contracted travel managers. He confirms, after checking with those travel managers, that there are no direct or indirect air routes available into the Gaza or the West Bank territories.

24. It is immediately apparent that the evidence filed fails in any way to deal with the specific points to which the attention of the Secretary of State was directed by the Tribunal. There is, therefore, no evidence before us that anyone has ever been successfully removed to any part of the Occupied Territories or that the Secretary of State would seek the procurement of any Emergency Travel Documents other than such as might be issued via the Palestine General Delegates Office in London as described in the filed statement of Ms Heaney. The absence of any reference to how a return through Israeli checkpoints is effected is particularly surprising having regard to the contents of the letter of 10 December 2003 from the Country Information Officer in the Immigration and Nationality Directorate to which we have referred at paragraph 12 above.

25. The expert report on Palestine which had been filed before the Adjudicator from a Dr Tamimi in the case of the third Appellant says that the suggestion that any Palestinian asylum seeker may be returned to Israel or to the Occupied Territories is indicative of ignorance of the nature of Israel which does not welcome any Palestinian back. He says that the policy of Israel has always been to endeavour to remove as many ethnic Palestinians as possible rather than to allow any of them to return and it is unthinkable that, even in the case of an official application, Israel would agree to allow the third Appellant to return. To do so would constitute a very dangerous precedent from the point of view of political Zionism which underpins the entire Jewish State. He says that inhabitants of the Gaza Strip fall into three categories: firstly, Jewish settlers who live in Jewish settlements built there

since the Gaza Strip came under Israeli control in 1967; secondly, Palestinians who sought refuge there after the establishment of the State of Israel in 1948 and who were accommodated in UNRWA-sponsored refugee camps who comprise some 80% of the Gaza Strip's Arab population; and thirdly, Palestinians who already lived in Gaza when Israel was formed and who make up the original indigenous population of the Gaza Strip. It would make no difference to the ability of the third Appellant to be readmitted through Israeli checkpoints whichever of the last two categories he comes from. Even the United Nations has no power to intervene and to force the Israelis to allow Palestinians back to the territories which Israel occupied in 1967 and Dr Tamimi knows of no case where this has happened. It appears that the Adjudicator accepted this part of Dr Tamimi's evidence because he says at paragraph 16 of his determination that it is clear from that evidence that "there is virtually no risk [to the third Appellant] because Israel will not accept him".

26. At the hearing before us Dr Tamimi gave oral evidence and adopted his earlier report. He said that the Israeli Authorities would usually allow anyone who could prove that he was a Jew to enter Israel under the Law of Return but that anyone else would have to have valid travel documents, including a visa from an Israeli embassy if they were coming from abroad, in order to pass through the Israeli checkpoints and gain admission to the Occupied Territories. It remained the case that he did not know of any ethnic Palestinian who had been forcibly returned to the Occupied Territories. For those Palestinians who were lawful residents of any part of the Occupied Territories it was possible to travel out of those territories into Israel or other countries provided that the person concerned held an Israeli ID card authorising such travel, but even those with such Israeli documentation still ran the risk of being detained at the border control points. Palestinian documents of themselves would not allow anyone to pass through those checkpoints. It was, however, highly unlikely that anyone being returned via Jordan without the relevant Israeli travel documentation would get as far as the checkpoints because there was cooperation in this respect between the Jordanian and Israeli Authorities and such a person would be turned back by the Jordanian Authorities. Whilst documents issued by the Palestinian Authority might be valid for travel to other parts of the world, they would not of themselves permit a return to the Occupied Territories or to Israel itself. The detention of Palestinians by the Israelis at checkpoints could be either formal, in the case of those suspected of having committed anti-Israeli acts or being associated with those who had done so which would result in prosecution and trial, but the majority of detentions were administrative in nature, in respect of which no reason need be given and the person detained could be held for a period of up to six months renewable indefinitely. There were at least 5,000 administrative detainees currently and the Israeli Authorities were suspicious that any Palestinian might be a potential terrorist.

27. The situation had become more tense in the course of the year. Whilst in the past there had been times when passage through the checkpoints followed a more regular pattern currently that was not the case, and it was unpredictable when and where Palestinians would be stopped and searched by the Israeli Authorities. Palestinians returning from abroad would be interrogated because in the current tension the Israeli Authorities would wish to have clear information on all returnees and those with whom they may have been associated even where they had valid Israeli documentation. Dr Tamimi said that he had been involved in Palestinian affairs since 1992 and wrote a monthly article for a Palestinian international publication. He had been born in Hebron in Palestine in 1955 and had not himself been in the Occupied Territories since 1972. He based his views on information available from public sources including Amnesty International and Palestinian human rights organisations. He was currently Director of the Islamic Political Thought in London, a position he had held since July 1998, and a senior lecturer at the Mark Field Institute of Higher Education in Leicester since September 2000. He had published a number of books and papers on Islam and the Middle East, including those with specific reference to the situation in the countries in which ethnic Palestinians had substantial enclaves of refugees.

28. On behalf of the second Appellant a report by Mr Joffe of 25 August 2004, and a subsequent letter of 27 October 2004 directed particularly to the issues raised in the directions which we had given, had been filed. In his original report he, too, made the same point as to the necessity of proper documentation in order to enter the Occupied Territories. He deals with it in this way:

> "Return to the Territories is possible only if the person concerned has a valid travel document from the Palestinian authority and returns within three years if he or she left to cross the land boundary to Jordan or Egypt or returns within six months via Ben Gurion airport. Return can only be effected if the path of return exactly mirrors the path of departure, although a concession in 1996 allowed return by any border crossing (Ben Gurion airport, the Allenby Bridge or Rafah) if the person concerned had left from Ben Gurion airport. Even though the normal conditions governing return were supposed to have been suspended after the Oslo Accords [in 1991] they are still in force and the Israeli Authorities will not allow access to anybody who has any illicit passport or no travel documents. Of course, a Palestinian normally resident in the West Bank or the Gaza Strip but without valid travel documents could, in theory, obtain such documents – in this case a Palestinian passport – from a Palestinian representation abroad, provided he could demonstrate his place of normal residence was part of the Occupied Territories. However, he would

still need to acquire an Israeli Transit Visa and would therefore always run the risk of detention by the Israeli border authorities, if they were suspicious of him in any way".

28. A little later in his report he said this of the position of the second Appellant:

> "Mr Massood, I suspect, will be unable to obtain access to the Occupied Territories and he probably does not have to [sic] appropriate documentation – evidence of residency and travel documents, together with the necessary visas or proof of departure. I do not know if he is here with dependants who would also return with him. If he does, then each of them must have evidence of residence separately, as well as travel documentation. Otherwise they will be treated as a case of family reunion. The Israeli Government has an absolute right over family reunion which it exercises very sparingly and only in connection with recognised categories of people, such as members of the Palestinian security force and administration. It can take up to eight months for an application to be processed and, in recent years, few such permits have been issued (United States Department of State, Israel and the Occupied Territories Human Rights Report 2002, Washington, March 2003)."

He concluded on this issue that because of his prolonged absence from the Occupied Territories, the Israel Authorities were likely to refuse the second Appellant transit rights to the Palestinian territories were he to be deported.

29. In his letter of 27 October 2004 he refer to the statements filed on the part of the Respondent which he categorises, with some justification, as being "singularly uninformative", making the point that nothing contained in them bears on the issue of Israeli Transit Visas where he had already made his view clear. He points out that there can be no doubt that the Home Office would be aware if any Palestinians had been removed from Britain to the Occupied Territories since it reports on the numbers and nationalities of removed asylum seekers in the quarterly asylum statistics which it publishes. He notes that in the latest issue relating to the second quarter of 2004, a total of 985 "Middle Easterners" were removed in the preceding twelve months broken down into Iranians, Iraqis and "Middle East other". In the latter category there were 125 returns only and if any of those returns had been to the Occupied Territories he could see no reason why such information should not have been provided as requested in the directions issued by us. He concluded that "If no figures are cited, then it is reasonable to assume that no Palestinians had been deported for there would be no interest for the Home Office in concealing such figures". He had considered statistics available from other countries but there was no information as to

successful returns to the Occupied Territories so that he regarded the question of actual return as remaining shrouded in mystery save for the fact that in September 2004 the Australian Federal Court had to make a decision on the future of a Palestinian asylum seeker who had been refused asylum. According to a comment published in the Sydney Morning Herald of 16 September 2004 the Australian Government could not remove him back to the Occupied Territories from which he had come because of Israeli refusal to collaborate so that the court decided that he would have to remain in detention indefinitely. This reinforced his view that such a removal was currently simply not possible.

30. The most detailed country report is that of the US Department of State and the 2003 Report published on 25 February 2004 was filed on behalf of the Respondent. This confirm that Israel required Palestinians to obtain Israeli permits for themselves and their vehicles to cross from the West Bank or Gaza into Israel and Jerusalem with partial external closure or enhanced restrictions on the movement of persons and products being applied often for lengthy periods on the basis of security concerns which, at times of violent protest, could become total external closure. In the more detailed section dealing with freedom of movement within the Occupied Territories, foreign travel, immigration and repatriation, the Report makes it clear that close monitoring is carried out by the Israeli Authorities who control all points of entry, and it is in our view implicit from what is said in this section that movement without the requisite Israeli identification documents either into or out of the Occupied Territories whether to Israel or foreign countries is not possible. In particular the report records that in December 2003 three Palestinians deported from abroad to the West Bank and Gaza were denied entry at the Allenby Bridge border crossing and were returned to the deporting country where they currently reside as stateless persons.

31. The objective evidence therefore supports what has been said both by Dr Tamimi and Mr Joffe and there is no evidence before us that any of the three Appellants are capable of successful removal to any part of the Occupied Territories or Israel. We have no reason to doubt Dr Tamimi's specific evidence that without relevant Israeli issued documents any such returnee via Jordan would be prevented from onward travel by the Jordanian Authorities.

32. We have therefore come to the conclusion on the totality of the evidence before us that there is no reasonable likelihood that any of the Appellants would reach the Israeli checkpoints through which they would have to pass in order for the removal directions made to be effective. This is important in the context of the proposed removals because it has been the submission of Counsel for the Appellants that, notwithstanding the fact that none of the Appellants have any profile arising from past activities in the Occupied Territories which would be reasonably likely to make them

wanted by the Israeli Authorities to whom they would be effectively presented at such border checkpoints if forcibly returned, the general evidence as to the treatment of Palestinians from the Occupied Territories was such that there was a real risk that they would be subject to arbitrary detention and ill-treatment by the Israeli Authorities. This would mean, therefore, that no ethnic Palestinian could be safely returned to the Occupied Territories. Whilst we accept that it is arguable that someone with a known anti-Israel profile by reason of past actions might be at risk of arbitrary detention and ill-treatment at an Israeli checkpoint, the general evidence does not, in our judgment, justify the conclusion that all ethnic Palestinians from the Occupied Territories are at such a risk. There is nothing in the backgrounds of any of the Appellants as found by the Adjudicators which would lead to such a real risk so that, considering the hypothetical question of whether any of them are currently at risk in their former home areas, we are satisfied that there is no evidence to support such a finding.

33. We accept that each of the Appellants is stateless but on the totality of the evidence they do not, as we have said, satisfy us that there is a real risk to them either should they in the course of any return be placed in a position where they are under the control of the Israeli Authorities. This was, of course, an issue which we were bound to consider by reason of the obligations of the United Kingdom under Article 33 of the Refugee Convention which provides that no contracting state shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion. Given that if there were any prospect of a successful return it would inevitably follow that each Appellant would be placed in the control of the Israeli Authorities at the point of entry to the Occupied Territories, there was a properly arguably issue as to whether this of itself would expose any of them to the real risk of persecution or a breach of their protected human rights. The objective evidence, however, simply does not support such a proposition. The only relevant evidence is that the Israeli security forces will not allow ethnic Palestinians being forcibly returned from abroad to re-enter the Occupied Territories.

34. Our conclusions as to the lack of real risk to the generality of Palestinians from the Occupied Territories with no profile likely to lead to their being of current adverse interest to the Israeli Authorities is, of course, wholly in line with the views of the Tribunal as expressed in *BA* [Perceived bias – Israel – Gaza) Israel [2004] UKIAT 00118.

35. The mere fact of being stateless, whilst we acknowledge the difficulties which it poses for each of the Appellants, cannot of itself amount to persecution or a breach of their human rights because there is no country which is excluding them from a nationality to which they would be

otherwise entitled. There is no state of Palestine to offer them citizenship and neither is there any international obligation on the State of Israel, who retain a large measure of control over the Occupied Territories, to offer them citizenship. On the evidence before us there is no realistic prospect that any of them can be returned to any part of the Occupied Territories so that there is no realistic prospect on the basis of the current removal directions that they can be removed from the United Kingdom. It is clearly highly unsatisfactory that in those circumstances they should be deprived of any status in this country and the Secretary of State will no doubt wish to consider how they should now be dealt with, taking into account our obligations under the European Convention on Human Rights.

36. For the above reasons it nevertheless follows that the appeal of each Appellant must be dismissed because each has failed to discharge the burden on him to demonstrate such a real risk.

J BARNES
VICE PRESIDENT