

FEDERAL COURT OF AUSTRALIA

Abou-Loughod v Minister for Immigration and Multicultural Affairs

[2001] FCA 825

MIGRATION – protection visa – application for review of decision of Refugee Review Tribunal – stateless Palestinian resident in Syria – registered with United Nations Relief and Works Agencies for Palestinian Refugees in the Near East (UNRWA) – whether “at present receiving from (UNRWA) protection or assistance” within the meaning of Article 1(D) of the Refugees Convention

WORDS AND PHRASES – “at present receiving protection or assistance”

Refugees Convention article 1(D)

ABRAHIM AHMAD ABOU-LOUGHOD v MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS

W 32 OF 2001

HEEREY J

26 JUNE 2001

PERTH

IN THE FEDERAL COURT OF AUSTRALIA

WESTERN AUSTRALIA DISTRICT REGISTRY

W 32 OF 2001

BETWEEN:

ABRAHIM AHMAD ABOU-LOUGHOD

	APPLICANT
AND:	MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS RESPONDENT
JUDGE:	HEEREY J
DATE OF ORDER:	26 JUNE 2001
WHERE MADE:	PERTH

THE COURT ORDERS THAT:

1. The application is dismissed.
2. The applicant pay the respondent's costs to be taxed.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

IN THE FEDERAL COURT OF AUSTRALIA	
WESTERN AUSTRALIA DISTRICT REGISTRY	W 32 OF <u>2001</u>

BETWEEN:	ABRAHIM AHMAD ABOU-LOUGHOD APPLICANT
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AND:	MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS
	RESPONDENT

JUDGE:	HEEREY J
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PLACE:	PERTH
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REASONS FOR JUDGMENT

1 This is an application for review under Pt VIII of the *Migration Act 1958* (Cth) of a decision of the Refugee Review Tribunal affirming a decision of a delegate of the Minister not to grant the applicant a protection visa.

2 The applicant is a single man aged 31 who arrived in Australia by boat on 4 September 2000 without travel documents. He is a stateless Palestinian who was born and resided in Syria, apart from periods spent in Lebanon, Libya and Sudan.

3 On 24 September 2000 he lodged an application for a protection visa with the Department. After an interview a delegate of the Minister on 24 October 2000 made a decision refusing his application. The applicant made an application for review to the Refugee Review Tribunal which, after a hearing on 25 January 2001, handed down a decision on 30 January 2001 affirming the delegate's decision. The main issue arising before the Tribunal and on this application for review is whether the applicant is excluded from the ambit of the Refugees Convention by Article 1(D) of that Convention. Article 1(D) provides:

“This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the general assembly of the United Nations. These persons shall ipso facto be entitled to the benefits of this Convention.”

4 In essence, the Tribunal decided that the applicant fell within article 1(D) because he was receiving the protection or assistance of the United Nations Relief and Works Agencies for Palestinian Refugees in the Near East (UNRWA). The Tribunal went on to find that even if it were incorrect in that view the applicant had no well-founded fear of persecution within the meaning of article 1A.

5 Turning to the reasons of the Tribunal in a little more detail, the Tribunal accepted that the applicant was born to Palestinian parents in Syria and was stateless. It accepted that he and his family were registered with UNRWA.

6 There are currently nearly 400,000 UNRWA registered Palestinian refugees in Syria. They have nearly the same status as Syrian nationals. They are free to live anywhere in the country and have equal rights in areas of education, employment, trade and health. They may own or lease business and commercial properties, although, unlike Syrian nationals, they cannot own more than one residential property and cannot own arable land. They can belong to one of the legally permitted political parties, but cannot vote or stand as candidates for the parliament or presidency. They can obtain in Syria travel documents which allow them to travel abroad and return without a re-entry permit. The travel document can be changed or reissued by any Syrian representative office abroad. The Tribunal cited current materials to support those findings of fact.

7 The Tribunal noted that although the applicant stated that he lost his right of permanent residence in Syria when he went to Libya, it was apparent that he retained his right to return to Syria, as witnessed by his return from Lebanon in 1988 and from Libya in 1999. He held a Palestinian travel document issued by UNRWA officials in Syria and was able to use that to exit and enter Syria. He destroyed this document before his arrival in Australia, but the Tribunal were satisfied that he could have a replacement issued by the UN or by Syrian authorities. The Tribunal noted that the applicant told them that he was still registered with UNRWA and would have no difficulty returning to Syria from the point of view of the government.

8 The applicant's mother and numerous siblings continued to live in Syria under UNRWA protection and if the applicant did not currently have that protection the Tribunal were satisfied that he could regain it as he has on previous occasions. The Tribunal concluded:

“In all of the circumstances, the Tribunal is satisfied that the applicant is stateless and is a former habitual resident of Syria, who has a right to resume residence in that country.”

9 The Tribunal noted that the applicant was born and educated in Syria, lived there as a permanent resident for a long period, and returned there for 10 months prior to his departure for Australia. He carried travel documents issued by the UN in that country, enjoyed most of the rights of a Syrian

national, including the freedom to exit and enter, served his military obligations for that country and has a large family that has continually resided there and has businesses and property in Damascus. The Tribunal said:

“While it is obvious that he does not have the complete protection and assistance of UNRWA while he is in Australia, it is also clear that he retains a current entitlement to that protection that can be realised should he return to Syria. A literal reading of article 1(D) would appear to defeat the purpose of that article, namely, not to extend the protection of article 1(A) to people who already have UN protection under another scheme. The Tribunal is satisfied that the applicant comes within the provisions of article 1(D), but even if it is wrong in that regard it is immaterial because for the reasons given below it is satisfied that he does not fall within the ambit of article 1(A) in that there is not a real chance he faces persecution should he return to his country of former habitual residence.”

10 The Tribunal then went on to discuss the material relating to the applicant’s claim which was based on fears, not of harm from the Syrian government but from a Palestinian group, Palestinian Front for the Liberation of Palestine - General Command (PFLP-GC). The applicant claimed that he had joined and fought with that body, but had left it and feared retribution from them. However the Tribunal was of the view that his history indicated that he did not face a real chance of persecution at the hands of the PFLP-GC.

11 He spent some eight or nine years in Libya, much of it in Tripoli, where the PFLP-GC has a strong presence and an extensive network of informers. It was implausible that the PFLP-GC would not be able to locate and punish him for desertion if that had been the desire of its leaders. Likewise his claim that the PFLP-GC discovered he had arrived in Syria three days after his return and, according to his evidence, were unable to have an agent make direct contact with him a few weeks later. The Tribunal thought that as a group known for its ruthlessness, it was not plausible its members would not have taken advantage of their knowledge of the applicant's location to punish him.

12 He used his usual documents to leave Damascus through the international airport and if, as he claimed, the PFLP-GC had the strong support of the Syrian authorities and wished to lure him back either for retraining or punishments, arrangements could have been made to intercept him at border crossings, particularly at the international airport. The fact that he voluntarily and freely departed is consistent with the Tribunal’s conclusion that the PFLP-GC has no interest in harming the applicant.

13 In my opinion, the construction the Tribunal put on article 1(D) is correct, notwithstanding that earlier decisions of the Tribunal have taken a different view. Given the findings of fact that the applicant can obtain UNRWA documents and return to Syria where he would enjoy the rights that have been mentioned, it is correct to say that he is “at present receiving” protection or assistance from UNRWA, in the sense that he has the immediate right to

practical assistance in the ways I have mentioned. This is the view of Professor James C. Hathaway in "The Law of Refugee Status", Butterworths, Toronto, 1991 at page 208 where, speaking of article 1(D) the learned author says:

"It does not exclude only those who remain in Palestine, but equally those who seek asylum abroad."

14 Given that the Convention as a whole is concerned with people who are outside their own country, that seems to me the natural meaning to be given to the provision.

15 The remainder of the Tribunal's decision was plainly a question of fact. The applicant, who is not legally represented, could do no more than assert contrary factual claims; for example, that he was one of the fighters for the PFLP-GC and would be persecuted on his return and that he would have no protection from the Syrian government. But no error of law or other error within s 476(1) of the Act has been demonstrated.

16 The application will be dismissed with costs.

I certify that the preceding sixteen (16) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Heerey J.

Associate:

Dated: 2 July 2001

Counsel for the Applicant:	Applicant appeared in person
Counsel for the Respondent:	P R Macliver
Solicitor for the Respondent:	Australian Government Solicitor

Date of Hearing:	26 June 2001
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Date of Judgment:	26 June 2001
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