KK IH HE (Palestinians – Lebanon – camps) Palestine CG [2004] UKIAT OO293

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IMMIGRATION APPEAL TRIBUNAL

Date of hearing: 24 May 2004

Date determination notified:

...29th October 2004.......

Before

Mr D K Allen (Vice President)
Mr J Barnes (Vice President)
Mr C P Mather (Vice President)

Between

'K'
'H'
'E'

Appellants

and

Secretary of State for the Home Department

Respondent

Representation:

For the first and second appellants:	Mr H Southey, Counsel, instructed by Wilson & Co.
For the third appellant:	Mr S Cantor, Counsel, instructed by Simmonds, solicitors.
For the respondent:	Ms E Laing, Counsel, instructed by the Treasury Solicitor.

DETERMINATION AND REASONS

1. The three appellants are all stateless Palestinians. Their cases have been linked in order that the Tribunal can consider the question of conditions in the Palestinian camps in Lebanon, in addition to considering the individual appeals.

Immigration History

The First Appellant

2. 'K' was born on 22 March 1978. He arrived in the United Kingdom on 5 August 1997 having travelled via Cuba. He claimed asylum on arrival. He had no valid passport or travel document and said his papers were lost as he boarded a plane in Cuba. He has no dependants. The respondent, in a decision dated 16 August 2000, refused leave to enter following the decision to refuse his asylum claim and indicated that he intended to give directions for his removal to Lebanon.

3. 'K' appealed that decision by virtue of Section 8(1) of the Asylum and Immigration Appeals Act 1993. The appeal was first heard by an Adjudicator who treated it as abandoned. Following a judicial review, the appeal was remitted back to the Immigration Appellate Authority for a fresh hearing. Subsequently, his appeal was heard by an Adjudicator (Mr J P Pullig), who in a determination dated 21 May 2002, dismissed it on asylum grounds. By virtue of the date of the respondent's decision, 'K's appeal was limited to refugee issues.

4. 'K' was granted permission to appeal to the Tribunal. Following an earlier hearing, the Tribunal, chaired by the Deputy President, dismissed his appeal in a determination notified on 3 October 2002.

5. The Tribunal later refused permission to appeal to the Court of Appeal but permission was granted by the Court on 22 November 2002. Following a hearing on 4 April 2003, the Court of Appeal quashed the decision of the Immigration Appeal Tribunal and remitted the appeal back to the Tribunal for it to be reheard by a differently constituted Tribunal.

The Second Appellant

6. 'H' was born on 20 December 1975. He left Lebanon on 11 September 1999 and went to Abu Dhabi. He remained there for fourteen days and then flew to the United Kingdom, arriving on 25 September 1999. He claimed asylum at the port. He travelled on his own, valid, passport. On 18 February 2001 he was refused leave to enter following the refusal of his asylum claim. He appealed to an Adjudicator (Mr D M Wynn-Simpson) who, in a determination promulgated on 10 July 2002, dismissed the appeal on both asylum and human rights grounds. 'K' applied for permission to appeal to the Tribunal. That was refused on 8 August 2002. He then applied for judicial review of that decision. On 11 October 2002, by consent, the High Court quashed the decision to refuse permission and remitted the appeal back to the Immigration Appeal Tribunal for a fresh consideration of the application for permission to appeal. On 4 November 2002 permission to appeal was granted.

The Third Appellant

7. ‘E’ was born on 1 July 1971. He arrived at Heathrow Airport on 5 December 1997. At the time he held a genuine Palestinian travel document which had been issued by the Lebanese authorities. He claimed asylum on arrival. On 20 January 2003 the respondent refused leave to enter, following refusal of his asylum claim and issuing directions for ‘E’s removal to Lebanon. ‘E’ appealed that decision to an Adjudicator (Mr M Shrimpton) who, in a determination promulgated on 25 November 2003, dismissed the appeal on both asylum and human rights grounds. The Tribunal granted him permission to appeal on 4 February 2004.

The Bases of the claims, the facts as found and the issues at large

The First Appellant

8. ‘K’ was born in Kuwait but does not have Kuwaiti nationality. He was educated there and in 1997 the family left Kuwait and went to Lebanon. His family moved into the Ain-Alihiwa Camp. He is registered with UNWRA. He accepts that when he subsequently left Lebanon for Cuba he used his own passport. ‘K’ described the Ain-Alihiwa Camp, run by UNWRA, as being very badly organised with a number of political parties operating inside it. Whilst there, the ‘K’ enrolled on a two year Business and Administration Course at the Sibleen Training Centre near Saida, which had been set up by UNWRA. All the students were Palestinians.

9. Whilst studying on that course he met two friends who were members of an organisation, El-Kifah El-Musalaah (the Armed Struggle Movement). It was a group that had split away from Fatah. They told ‘K’ that the aim of the organisation was to liberate Palestine. They collected donations for the cause. He was persuaded to join and was given an identity card. He understands that there were about 150 other members of the group. He helped to collect donations and undertook military training. When the group expressed its intention to become involved in military operations outside the camp, on the South Lebanese/Israeli border he did not wish to be involved. It was made clear to him that having joined, he was there for life. He was told he had information about the organisation and that, if he deserted, he would be tortured, detained and beaten. One of his neighbours was also a member of the organisation and had run away two months before. He had never returned. He said that he knew he would have to leave Lebanon because he would not be able to work legally outside the camp and had no other means of financial support. His parents agreed to pay for him to leave the country. He claimed that he would have to go back to that camp if he were returned to Lebanon and would

be put in prison there. If he were outside the camp he would not be able to study or work and would be humiliated. He said that he would be tortured in prison and there was nobody to turn to in the camp for protection.

10. When cross examined he confirmed that he had never been arrested or detained in Lebanon and had never suffered any physical harm. He said that, as a Palestinian, he was humiliated.

11. The Adjudicator, in dismissing the appeal, found 'K' was not a credible witness. Although that credibility finding was originally challenged in the appeal to the Tribunal it was not a feature of the appeal in the Court of Appeal. The court dealt only with the question of whether or not 'K' would be persecuted for a Convention reason if he were returned to Lebanon and to the camp. As a result, the only issue before the Tribunal was the question as to whether the conditions in his camp are such that to return him, as a young male failed asylum seeker would amount to persecution.

Second Appellant

12. 'H' was born in Libya where his father was working. The family returned to Lebanon when 'H' was about five years old (in about 1980). He lived in the Borj el Shimali Camp. He describes the camp as containing a lot of political opposition supported by Islamic organisations headed by Hezbollah. 'H' left school at the age of fifteen and studied for a further two years in the Siphine Training Centre sponsored by UNWRA. Following that, he worked as a car mechanic until he left for Abu Dhabi in July 1998. He remained there for a year with a work permit. His stay was then extended for a few weeks by his manager. He returned to Lebanon in late July 1999 and remained there for about one and a half months before going back to Abu Dhabi on 11 September 1999. He stayed there until he left for the United Kingdom after about fourteen days.

13. He was asked at interview why he left Lebanon. He said that he was a member of Fatah and part of his role was to distribute leaflets. There came a day, in 1997 when there was a celebration. Islamists had invited a singing group from Jordan. Out of respect, members of Fatah, including 'H', went to the celebration during which a Sheikh made a speech and cursed Fatah. He criticised Yassar Arafat. This caused 'H's group to increase the distribution of their leaflets criticising Hamas. As a result, a leader of Hamas in another camp, issued a statement which 'H' described as a fatwa to the effect that anyone who had participated in writing and distributing the leaflets would be considered an atheist, against Islam and should be killed. 'H' claims that as a result, one of his colleagues was killed in about June 1997. He

said there were five of them who were involved in distributing the leaflets. Of the others, one went to Cuba, one to Holland and one, possibly, to Germany. As a result of this fatwa, 'H' went to stay with his sister in Beirut. Her husband knew of a project in Abu Dhabi and was able to get him a job there as a car mechanic.

14. The Adjudicator found 'H' was not a credible witness. Referring to the move to Abu Dhabi, which he accepted, he said,

> "It is an entirely understandable decision on his part for it is clear that the Palestinian refugees living in camps in Lebanon do so in conditions in which there is an almost total disregard for human rights".

Notwithstanding that, as a result of the adverse credibility finding, the Adjudicator decided that 'H' was not a refugee. On the subject of human rights, he also rejected the claim that it would be a breach of 'H's rights under Article 3 ECHR to return him. He rejected the submissions made on his behalf on the basis that, if correct, every Palestinian from the camps in Lebanon would be entitled to claim the protection of the European Convention in any state in the European Union. The Adjudicator said he could find no evidence that had been established to be the position.

15. Following the quashing of the refusal of permission to appeal, 'H's appeal has come before us. The issue of credibility is an issue for us to decide, in addition to considering the general conditions in his camp.

The Third Appellant

16. 'E' was born in Al-Rashidieah Camp in Lebanon. He went to Cyprus in 1993 with a one week visa. He overstayed and was deported from Cyprus to Lebanon in 1996. He subsequently left Lebanon for the United Kingdom, arriving here on 5 December 1997. He claims to have joined the Abu Nidal Organisation in the early 1990s. He says he became involved in fighting between Abu Nidal and Al Fateh in 1993. The Adjudicator found he had not given any consistent or credible account of what then happened to him. The Adjudicator accepted that 'E' had been a very low level member of Abu Nidal, a terrorist organisation. He accepted that 'E' had never been involved in any terrorist activity. He concluded that, as a result of general fighting, 'E' simply formed the desire to leave Lebanon. He did so first, when he went to Cyprus. 'E' has not challenged the adverse credibility finding made by the Adjudicator. He relies entirely on conditions in the camps as the basis for his appeal. There is little in the papers (and nothing in the determination) about the level of education achieved, or the work history, of 'E' when in Lebanon.

General preliminary observation

17. During the course of this appeal, although each appellant came from a different camp, none of counsel made any attempt to distinguish between the different camps when considering the conditions in them. We noted that none of the appellants made any complaint in evidence about the general living conditions which they had experienced, whether in terms of unsanitary conditions, poor housing, lack of opportunity to work, or lack of healthcare.

Evidence of Dr George

18. We heard evidence from Dr Alan George. He had provided a report on 'H' dated 18 March 2003. He confirmed his qualifications as set out at the start of that report. He had been working for the last twenty years as a freelance journalist, consultant and researcher during which period, between 1984 and 1992, he had been in the Lebanon for the Economist Intelligence Unit, the consultancy arm of the Economist organisation. Previously, among other things, he had been head of research at the Arab/British Chamber of Commerce and worked for a public relations company whose clients included the governments of the United Arab Emirates and Libya and the London office of the Palestine Liberation Organisation. He had recently reread his report on 'H' and was satisfied that it remained an accurate description of the situation in Lebanon where there had been no significant changes.

19. Asked to describe the economic position of Palestinians in the Lebanon, he said that it was dire. They had never been granted nationality or the right to work. Work permits had recently been issued but only to very few people. There was discrimination in all areas especially work. For example, it was impossible to work as a doctor as it would be necessary to be made a member of the Lebanon Medical Association, which required Lebanese nationality. He had recently had the situation described to him by a senior official as being akin to apartheid. Effectively, therefore, Palestinians in Lebanon could not work outside the camps and they had unemployment rates of about 60% in comparison to the national average of approximately 25%. The deputy director for UNRWA had told him that Palestinian refugees in Lebanon were far worse off than their equivalents in other countries such as Jordan and Syria.

20. Dr George said that there are appalling conditions in the camps. The accommodation had begun as tented settlements and gradually these had been converted by individual families into ramshackle structures built generally of breeze blocks which suffered from damp in the winter and were unsanitary. There had been a lot of destruction,

particularly during the camps wars in the 1980s and a lot had not been repaired.

21. Outside the camps there were Lebanese checkpoints. As regards health conditions, the UNRWA provided very basic health services, mainly perinatal, but little beyond that, and the Palestinians were not able to use the Lebanese State Public Health System. There was private health care but that was expensive and in effect there was no access to effective medical care. The UNRWA care did not compare with that provided by the state. The state system was not well funded but it contained a wide range of services, while the UNRWA services other than the perinatal services were pretty basic.

22. He was asked whether it was realistic for Palestinians to move elsewhere in Lebanon and replied 'no'. During the 1980s there had been a degree of overspill from the camps into nearby areas. Officially one could move from camp to camp and outside but in practice the camps were overcrowded and also the family was the key social unit and people would live with their family in their ethnic group. Communities stuck together.

23. There were restrictions on freedom of movement. Lebanese army checkpoints controlled entry to and exit from the camps and there was a lot of harassment. Also there were Lebanese and Syrian authorities' checkpoints throughout the country, the purpose of these being to contain and control armed militia, so searches were carried out and there was harassment. People would be allowed to go on, but bribes generally had to be paid and the same problem existed at the Syrian checkpoints. There was the risk of being attacked and they would probably have to pay bribes. This was true for Lebanese as well as Palestinians at the Syrian checkpoints. The concern was to contain the Palestinians within Lebanon. Especially the pro-Arafat group members were particularly targeted at Syrian checkpoints and the situation was unpredictable. Palestinians were more likely than Lebanese to suffer such treatment. There would also be bureaucratic delays at checkpoints and the risk of detention which was quite arbitrary and a further risk of ill-treatment including torture was a possibility in detention.

24. Camp residents had in short no protection in the camps. The Lebanese authorities were not present. There was no physical protection provided by UNRWA which provided only basic relief services. A range of armed guards was active within the camps and there were street battles. There was no guarantee of protection if you were a member of a group and they could decide that it was not worthwhile protecting you.

25. He was asked how it was that he described conditions in the camps as life threatening, and said that there were environmental health problems and illness and clashes between groups and the Islamic groups were rapidly gaining strength.

26. When cross-examined by Ms Laing, Dr George confirmed with regard to paragraphs 3 and 5 of his report concerning aspects of his personal history, that he had not been in Lebanon at these times. It was put to him that he had been monitoring events at second hand and he said that this was true to a great extent, but that he could better monitor the Middle East from London and not on the ground as people spoke more freely here. He had met and spoken to Lebanese people and he would say that his knowledge was first-hand. As regards paragraph 35 of the report, he was asked whether he had visited camps in the Lebanon and he said yes, he had visited several in Beirut in 1996. He said the camps in the Lebanon were the worst in the region but they all looked similar.

27. He was asked whether he could relate his general comments to 'H's' case since he did not refer to any particular suffering due to his experiences in the camps. He said that he had read 'H's statement and he had no reason to doubt what he said but it did not alter the objective reality. He was referred specifically to the statement at page 28 of the bundle at paragraph 10 when 'H' said that his father had been allowed to build a house in the camp they went to live in. This had been in 1981. Dr George said that at time the Lebanese civil war was under way and the state had collapsed and there were no Lebanese government controls. He was not aware of technical problems of permission to build a house in a camp and it was a question of room.

28. He was referred also to paragraphs 11 to 13 concerning 'H's educational and employment experiences and that he was able to leave Lebanon to work in Abu Dhabi. He said at paragraph 16 that he had never thought to leave Lebanon and the suggestion was put to him that 'H' had no particular problems from general conditions in the camps. Mr George responded that in his view this stretched what 'H' said and it was unclear whether he had a work permit or whether he needed to pay a bribe.

29. He was referred back to paragraph 28 of his report and was asked whether he accepted that the state controlled education system that was available to the Lebanese was not of a very high standard. He said that they were better than for Palestinians but not as good as western countries such as France or Switzerland. He accepted that the medical facilities had been badly affected by the civil war, but contended that they had been reconstituted since the end of the civil war. There was a much wider range of facilities available in the state hospitals than those available in the camps. As in the United

Kingdom, the lower end of society would not be able to pay for private health care.

30. As regards education, he was asked whether he accepted what was said in the 2004 Country Assessment that generally the state schools were inadequate in Lebanon. Dr George said that again it was comparative and they were inadequate in comparison to European schools but better than for the Palestinians. The primary education was not bad but beyond that it got worse.

31. As regards the economic situation generally in Lebanon he accepted that there was a high level of debt, in particular foreign debt. It was a state funded on debt, in his view. He was referred to the point made in the Country Assessment concerning a seven year pay freeze and he said that there had been a lot of means taken to combat debt over the years but none had been effective and Lebanon had simply carried on borrowing and spending. There was a risk of instability if there were pay freezes and they had not really resolved the civil war issues and the government had to be careful. It was true that the minimum wage was enforced in the private sector. He also agreed that it was true that the minimum wage was inadequate to provide a decent standard of living. Dr George said that there was a 68% chance of Palestinians living in the camps being unemployed. He referred to paragraph 32 of his report. It was unclear what the absolute figures were and it depended upon how you defined a camp and the boundaries of the camps were blurred. He agreed that it was unclear how many lived in unofficial camps and it was a complex picture. As regards accommodation, he said that generally conditions in the camps were poor. It was put to him that 'H' had not complained about these conditions and he said that 'H' had made no comment on those matters. He accepted that the ban on bringing construction material into the camps was not total, on the basis that one could bribe with some ease and there was a degree of smuggling but it did not alter the official picture. As regards the final sentence of the last paragraph of his report to the effect that a Palestinian who was returned forcibly to Lebanon would face conditions that amounted to persecution, this was a question for the Tribunal, but he considered that he was entitled to express a view on it as an expert.

32. There was no re-examination of Dr George. We referred him to photographs at page 127 and page 133 of, in the latter instance, a classroom and in the former instance buildings which were not built of breeze block and corrugated iron but were within the camps. As regards the school photographs, he stated that there were rooms with blackboards and desks. As regards the photograph at page 127, he said that the camps developed and became districts of cities and there were shops and other buildings but generally built of breeze blocks. It

could be that the buildings were offices not to do with the camp but at the edge of the camp. There were buildings including office units also.

Evidence of Mr Joffe

33. The next witness was Mr E.G.H. Joffe, who had provided a report on 'K', dated 12 August 2002, and also provided a report on 'H' dated 1 June 2002 and had also provided further information in a letter to the Deputy President dated 27 March 2003. He confirmed his qualifications as set out in particular at pages 13 to 14 of the bundle. He was currently Visiting Professor in Geography at Kings College London, concentrating on the geopolitics of the Middle East and also held a lectureship at Cambridge University. He had previously, among other things, been a Deputy Director and Director of Studies at the Royal Institute of International Affairs and had written a number of publications which are listed at the start of his report. He had reread his report and the letter recently and there was nothing he wished to change and nothing inaccurate except that at the end he had said that 'K' would have to return to the Ain-Al-Helwa camp as he would not be allowed by the Lebanese authorities to settle anywhere else, but he accepted that it was in fact the case that it was possible to move to other camps.

34. The position of Palestinians in Lebanon had not changed significantly since he wrote the reports.

35. With regard to the overview of the economic position, he agreed with Dr George. There was discrimination with regard to access to employment and Palestinians in Lebanon were excluded from seventy-two professions. It was theory not reality with regard to obtaining work permits. They were confined to residence and work within the camps and this was sometimes illegal. He was asked whether it was not realistic to move outside the camps and he said certainly one could go from camp to camp if they were UNRWA camps, but it was very difficult otherwise; they needed a Lebanese government permit, they could not buy land, and it was very hard to get work. It might be possible if a Palestinian had married a Lebanese citizen or if they were a professional and registered, but it was very difficult.

36. As regards living conditions in the camps, Mr Joffe had no personal experience of these but the situation was very poor. He had been to the Gaza Strip and the West Bank in Israel and Jordan and they tended to be very similar. The camps had the reputation of being worse in Lebanon. They were very small dwellings, often built in breeze blocks with tin roofs, no sewage and no water provision and were very unsanitary, so it was very unlikely that the life style was adequate.

There would be adverse public health problems with health consequences for residents. He referred to a Medical Aid for Palestinians report concerning the situation being very poor in Lebanon but did not have the report with him.

37. Gastro-intestinal diseases were common, especially for children. The medical services via UNRWA in the registered camps could hardly cope. That organisation's budget had reduced over the last five to ten years and it could not deal with the conditions. The Shias had rather better medical provision because of the influence of groups like Hezbollah. It was generally worse than for the Lebanese population.

38. It was worse for Palestinians in Lebanon than for Palestinians in Jordan. He had no doubts about that and believed it was worse than in Syria but also as it existed in the West Bank and the Gaza Strip, at least until recently. The Lebanese state could provide no security and did not directly control the camps and the Lebanese army and the police did not penetrate inside the camps which were under the control of the militias which led to a lot of insecurity. Outside the camps there were checkpoints manned by the Lebanese army and also controls and checkpoints manned by the Lebanese and the Syrians. The Palestinians were likely to face greater harassment and inconvenience than the usual Lebanese citizens. It depended upon where you were in Lebanon. Palestinians could not generally expect the normal security of a proper well run state. There was the risk of arbitrary arrest on account of being Palestinian. The Lebanese government did not allow Palestinians to acquire a sense of permanence in Lebanon and there was a greater degree of discrimination than that experienced by other groups.

39. When cross-examined by Ms Laing, it was put to Mr Joffe that on the whole the publications set out at pages 40 and 41 of the bundle appeared not to have any obvious relevance to the issue before the Tribunal. Mr Joffe said that this was generally true but it came into virtually all of them. It was suggested to him that in his report he analysed 'H's claim to be persecuted by reference to two factors, firstly his subjective account concerning the fatwah and, secondly, conditions experienced by Palestinians generally. Mr Joffe agreed and said that he emphasised the latter. It was put to him that at page 48 in the last paragraph following on from the previous paragraphs and going over the page, that the effect of his view was that cumulatively there were two matters which in his view amounted to persecution. He agreed that this was the case. He had based it on the assumption that 'H' was found to be credible, otherwise there would be no point. It was put to him that if he removed the person's situation would he say that there was a claim for persecution in the general conditions, and he said that it was not within the Convention as far as he understood it, but 'H'

would not receive protection from the Lebanese state from whatever threats he might face. It was not for him to judge matters of the Refugee Convention. In common parlance, he had reason to fear as there was no protection by the Lebanese state and there was discrimination. The potential for persecution lay there. He did not accept that it depended upon the circumstances; it was not for him to make that judgment but it would be less so if personal circumstances were removed.

40. It was put to him that, as Ms Laing had put it to Dr George, 'H' did not really rely on particular matters. Mr Joffe replied that it was probably true but it could be that he did not choose to say so.

41. He was referred to his report on 'K' and 'K's statement at pages 8 to 12. He was asked whether, if he separated out the main strand, that being the fear from the armed group, there was anything there showing that the conditions of Palestinians generally in the Lebanon amounted to persecution. Mr Joffe said he was not sure what Ms Laing was inferring. It could not be persecution by the Lebanese as they had no authority in camps. It would be dangerous to generalise from his family's experiences, having been relocated from Kuwait and they would have had a lot more resources available to them so he could have a different situation from that of many Palestinians. It was put to him that it was hard to generalise from all to a particular case and he replied that there were complicated patterns of survival but the circumstances were a form of persecution and discrimination and being able to cope did not avoid the general situation. Finally, he agreed that what he had said in his statement as regards relocation was not quite correct.

42. There was no re-examination.

43. We asked Mr Joffe what he understood by persecution and he said that in the case of individuals it was treatment not only discriminatory but damaging personally. As regards groups, it would involve deliberate conditions designed to worsen their circumstances especially with regard to the Palestinians, so as to deny them the normal pattern of life and their rights. It went beyond discrimination to persecution. Discrimination and persecution were not interchangeable and persecution would involve deliberate action to worsen the circumstances of a group which was discriminated against.

<u>Submissions for 'H' and 'K'</u>

44. We then heard submissions from Mr Southey. He reminded us that 'K's case involved issues arising under the Refugee Convention only, given the date of decision in that case, but that 'H's case involved

issues arising both under the Refugee Convention and the Human Rights Convention.

45. The Tribunal should recognise the expertise of the experts and attach a reasonable degree of weight to what they said. Their evidence was in any event generally consistent with what was said in the Country Assessment and the US State Department Report and the Amnesty International documentation. Both the experts and the various reports had gleaned their information from a range of sources, having studied the material at length.

46. It was clear from the evidence that Palestinians in Lebanon were denied social and civil rights enjoyed by the Lebanese population. There was an absence of protection which was critical in many ways. UNRWA's role was not to provide protection, as could be seen from the extract from their website at page 93 of the bundle. The camps were unsafe. There was a risk of crossfire if not from a person's individual circumstances. If Palestinians sought to leave the camps and turn to the Lebanese authorities then they would experience hostility and a risk of arbitrary arrest. He referred us to the US State Department and the Amnesty International report in this regard and also the evidence of the experts. The Amnesty report also made it clear that there were restrictions on freedom of movement, however, save that it was now possible to move from one camp to another, but there were very similar circumstances in each. There was a huge impact of the discrimination on daily activities. Job prospects were very poor and their situation was a lot worse than that of the general Lebanese population. Few work permits were issued and there were restrictions on their ability to enter a lot of vocations and trades. He referred us also to the Amnesty International report produced today which made it clear that whilst there was discrimination also vis-à-vis some non-nationals, Palestinians were stateless so they could not have those rights and no recognised state would negotiate for them. He referred us to the US State Department Report at page 134.

47. There was a lot of poverty in the camps as could be seen from page 91 which formed part of the UNRWA website information, and the State Department Report at page 86 in the bundle. Palestinians' incomes were declining. Also accommodation was generally poor. They had no ability to own land or inherit as was accepted in the Country Assessment, and again that situation was less favourable than that of other non-Lebanese in the Lebanon. It was clear from the latest Amnesty International Report and the US State Department Report that foreigners could own small plots of land, in comparison to Palestinians. The camps themselves lacked proper infrastructure and this was confirmed by UNRWA. The accommodation was cramped and the sewers were inadequate. As regards the point made by the

Tribunal concerning the photographs, this should be viewed with a degree of caution. There was a lot of damage in the camps and problems with getting building material though clearly some did get in, but this seemed to be a consequence of bribes and smuggling, and rebuilding could be very difficult. There were significant public health problems according to the experts and today's Amnesty Report and these were not adequately addressed by UNRWA. They were worse than the Lebanese health services which were not a model themselves but better than those offered by UNRWA.

48. There was a denial of access to education and the situation was again worse than that available to Lebanese generally. The age of the appellants should be borne in mind, and this was not directly significant to them, but it would be argued that the law needed to consider discrimination which diminished the dignity of the community and if the state denied educational facilities in a discriminatory manner to Palestinians it could be an aspect of ill-treatment. It raised issues of third level rights. Mr Southey thought that rather than this referring to primary education, it was a matter of basic education. He thought there was a recent Court of Appeal decision on age discrimination for further education funding though it had been found there was no violation but that within EC systems there was no basis to distinguish between primary and secondary education.

49. Mr Southey referred to Article 22 of the Convention on Statelessness as being relevant to these cases. This required giving access to stateless persons within a state on the same terms essentially as their own nationals and to other forms of education so they should be treated as favourably as possible and not less than aliens generally. That was however, he accepted, perhaps the least significant aspect given the ages of the appellants. Issues concerning work and health were more important in this case as they could give rise to life threatening circumstances.

50. Mr Southey then took us to the relevant legal issues. At page 109 was an extract from Professor Hathaway's book, The Law of Refugee Status, concerning second category rights and such matters as freedom from arbitrary arrest and detention, the right to equal protection for all, and limited derogation rights which were not applicable to Lebanon today. There was a higher risk of arbitrary arrest for Palestinians in Lebanon. The proper approach was to look at all the aspects of discrimination on the totality of the evidence. He could not break it down, not least because if one looked at the European Convention on Human Rights case law it was the overall package of ill-treatment that determined the case. He submitted that it was the same approach for the Refugee Convention.

51. Page 110 of the extract from Hathaway concerned third category rights. These were discriminatory matters not binding on a state. Reliance was placed on the discriminatory aspect and the overall effect. It was accepted that there was a degree of discrimination against non-nationals in Lebanon which could be acceptable in international law but not necessarily so. The appellants were stateless. The Tribunal was referred to Mr Southey's skeleton argument. They should be treated no less favourably than aliens generally. Article 17 of the Refugee Convention concerned wage earning employment and Article 21 housing. Public relief at Article 23 included health care provision and this needed to be equivalent to that provided for nationals. Also there was Article 32 of the Statelessness Convention, which was concerned with the requirement to facilitate as far as possible the assimilation and naturalisation of stateless persons. The situation of Palestinians in the Lebanon had been the same for over fifty years now; this involved a violation of their rights by the Lebanese state and they should not be non-nationals by now. It was true that Lebanon was not a signatory to the Convention but it did not alter the situation as to whether or not it was persecution and the point should be considered objectively. Mr Southey also placed reliance on Article 2(3) of the International Covenant on Economic Social and Cultural Rights which, he contended, had to be compatible with a person's human rights. The Article contained guidance on this. Denial of rights to non-nationals had been considered by the United Nations Human Rights Committee in Karakurt v Austria, Communication No. 965/2000, U.N. Document. CCPR/C/741 D/965/2000 [2002] to be found at tab 3 of Mr Southey's bundle. It had to be proportionate. There was no reasonable and objective justification for discrimination against Palestinians as there was no such discrimination against foreign nationals. There was no merit to the purported justification that Lebanon did not want to risk jeopardising the Palestinians' ability to return to their Palestinian homeland. There was no reason why this could not be left to the individual Palestinian.

52. He argued that initially their admission to the Lebanon had been intended to be temporary with the UNRWA looking after their welfare, but contended that they should be treated as other foreign nationals were treated and also as Lebanese citizens were treated, as fifty years was too long to leave them in this situation without citizenship, and was itself in violation of their human rights in accordance with international norms of human rights law. It was also relevant to the issue of reasonable and objective justification which could have been so in the 1940s but was not so now. International support remained to be provided and it was grossly inadequate, and it seemed that UNRWA would agree. Aspects of their situation came outside UNRWA's terms of reference, for example, protection. Proper funding would give rise

to better living conditions, the economic position being improved and it could reduce the need for protection. There was however little prospect of improvement, if anything UNRWA had come under greater financial pressure.

53. Palestinians were able to travel, but the international community was dealing with the issue via the back door. It might need to be addressed directly by providing protection and it was a shared burden to an extent. It could not be acceptable to provide the same considerations now as in 1949. Also, Palestinians in Lebanon today were probably worse off than in any other country except possibly Israel. There was therefore unjustified discrimination as their situation might be better elsewhere. A fair comparison could perhaps be made with Jordan which was similar economically, but the conditions for the Palestinians there were better. Mr Southey also referred us to the UN Convention on the Rights of the Child, set out at pages 10 and 11 of his skeleton, and argued that the child of a stateless person should get the nationality of the state. He adopted the submissions which would be made by Mr Cantor which were to be found in his skeleton argument concerning whether discrimination was legitimate with regard to non-nationals under the Convention for the Elimination of Discrimination.

54. Mr Southey contended, therefore, that it could be seen that discrimination could be acceptable to an extent with regard to non-nationals but there were very clear limits and in this case it went beyond what was acceptable and compatible with international human rights standards. He argued that the discrimination against Palestinians in the Lebanon was persecution. Inevitably, there was a feeling of hopelessness and worthlessness for Palestinians who could not see an improvement but in fact deterioration in their situation. The restrictions on work and movement meant that they would feel there were no or very limited individual prospects of betterment. Also there would be a greater feeling of hopelessness because it was discriminatory ill-treatment. Also with regard to poverty, when this arose from discrimination it was more likely to lead to a feeling of being degraded and worthless. As regards the East African Asians case [1973] 3 EHRR 76 which could be found at tab 7 of Ms Laing's bundle, reliance was placed on paragraphs 207 and 208. It was relevant in showing that circumstances might exist where economic discrimination/ill-treatment of itself did not give rise to an Article 3 breach but if based on race could do so as being an affront to human dignity.

55. Palestinians in Lebanon had been denied basic rights and adequate accommodation on account of their race. This had been for a lengthy

duration and was a special form of affront as so described in that case. It was unsurprising that race was a feature as it diminished dignity.

56. We asked Mr Southey whether there was any record of Palestinians in the Lebanon making representations to international bodies. Mr Southey thought it was fragmented as nobody represented Palestinians in Lebanon. UNRWA was the nearest thing and he referred us to page 91 of his bundle. The size of the group did not really mitigate the points concerning human dignity as it could increase the sense of helplessness if it were a larger group.

57. As regards the subjective position of the appellants, the position was that the Tribunal had not heard their oral evidence. They said that the Secretary of State did not engage with the issue and hence if it was found that there was a realistic basis to the claim then there probably needed to be specific fact finding. There was a lack of findings by the Adjudicator both as regards general and specific matters and no findings on the discrimination point. If the Tribunal agreed that the treatment experienced generally by Palestinians in the Lebanon crossed the threshold then the personal histories were irrelevant.

58. As regards the credibility findings in 'H's case, the Adjudicator should say what the inconsistencies and vagueness were and it could not inevitably mean that there was a lack of credibility. The points made by the Vice President when refusing permission were ex post facto and it was an Adjudicator's duty to give sufficient reasons as this would help the appellant to understand why there had been a refusal of his appeal and also it was good discipline for Adjudicators.

59. In 'K' the issue that arose was whether the discrimination amounted to persecution. The Tribunal that had first heard his appeal had upheld the Adjudicator's credibility findings and the matter thereafter had been taken to the Court of Appeal on other issues. As regards 'H's case, it was only possible to live in the camps but there was no protection essentially within the camps from the various groups and therefore taking his evidence at its highest he was clearly at risk. He could not say that in any particular camp there was proper protection.

Submissions for 'E'

60. Mr Cantor adopted Mr Southey's submissions concerning his lay client, 'E'. He also adopted his own skeleton argument. His case, like 'K's, depended essentially upon the objective evidence. He referred us to the decision of the Tribunal in Gashi [1997] INLR 96 concerning the situation where an objective fear was enough. He also referred us to pages 24 to 26 of his supplementary bundle.

61. Mr Cantor referred us to aspects of Ms Laing's skeleton. At paragraph 8(2)(c)(i) she referred to Article 2(3) of the International Covenant on Economic Social and Cultural rights. Mr Cantor referred us to his skeleton on this at paragraph 9, making the point that this exception should be narrowly construed. Also, as regards subparagraph (iii) further on in Ms Laing's skeleton, this was qualified by the recommendation of the UN Committee and again the Tribunal was referred to Mr Cantor's skeleton, in particular at paragraph 10(i) and also (iii).

62. As regards UNRWA's mandate, he referred us to page 49 of his supplementary bundle with regard to housing. It was accepted that UNRWA had a mandate to assist, but the discrimination pervaded. He also referred us to the CERD (Committee on the Elimination of Racial Discrimination) report and the points on social security at page 48.

63. As regards Article 3, he referred us to the decision of the Court of Human Rights in Pretty v UK [2000] FCR 97 as aspects of the reasoning in that case were relevant to Palestinians in Lebanon. The Tribunal was referred to the supplementary bundle at page 47. This was exactly the kind of effect of humiliating and debasing treatment involved and it was necessary to decide whether there was a real risk of that, and Mr Cantor contended that there was.

64. He also referred us to Tesema [2004] EWCA Civ 540, which had been put in today by Ms Laing, and in particular paragraphs 43,44, 87 and 89 were referred to as relevant and the situation was tolerated by the Lebanese authorities. The duration of the period of destitution and uncertainty was a relevant factor with regard to Article 3. There was no end to this in sight, and he referred us to the Country Assessment in this regard.

65. Finally, with regard to photographs, he referred us to the supplementary bundle which contained photographs of each of the camps and showed their dilapidated nature.

Submissions for the Secretary of State

66. In her submissions Ms Laing dealt first of all with the Refugee Convention. It was necessary, in her view, not only to consider the risk of treatment on the objective evidence but whether it would have a personal impact on these particular individuals.

67. The core of the objective evidence was not in dispute but there were some differences of emphasis, and the real issue was the conclusions to be drawn from it.

68. For example, she contrasted what was said by Mr Southey in his skeleton at paragraph 2.2 concerning arrest, detention and harassment, with the general position as shown at page 77 of his bundle which indicated that this applied to Lebanese citizens generally. As regards Mr Southey's paragraph 2.3, concerning freedom of movement, again the Country Assessment showed that it was the case that Palestinians could move around and the Syrian checkpoints applied equally to Lebanese citizens. With regard to Mr Southey's paragraph 2.7 concerning living outside the camps, this was again perhaps a difference of emphasis. There was a lack of certainty concerning the numbers of Palestinians living in and outside the camps but it was accepted that they could not buy or inherit the land. As regards 2.11 of Mr Southey's skeleton which dealt with access to education, Mr Joffe had suggested that this came from agreement by the Lebanese government. Palestinians were to control the camps and it seemed to be left to them to control the camps rather than the Lebanese. As regards paragraph 2.13 of Mr Southey's skeleton which dealt with access to education, it seemed that the primary level of education made available by UNRWA was on the whole adequate. In any event, none of the three appellants complained particularly about their education.

69. As regards the experts, Mr Joffe accepted that he had never been to a Lebanese camp but said it made no difference, and Dr George had been, in 1996. It was of some significance that Mr Joffe was unaware when he wrote his reports about changes concerning freedom of movement and he had accepted that he was wrong about that. Generally Mr Joffe had come very close to conceding that when one took away 'H's credibility he did not have any cogent claim. It was clearly not for Mr Joffe to decide this but it was nevertheless of some significance. She contended that both experts were prone to sweeping generalisations not based on their own experience and came to unjustified conclusions. For example, Dr George's contention that the conditions in the camps were life threatening generally could not be true for every Palestinian in Lebanon and could only be so if there were specific evidence concerning an individual.

70. Concerning the issue of discrimination which was said to amount to persecution, Ms Laing contended that it was not racial because it was far from clear that Palestinians were a race, but it arose because they were stateless and Lebanon had not ratified the Statelessness Convention. The reason was because it had a very difficult problem to deal with, having accepted a lot of stateless people in 1948 and 1949, whom it was very difficult for Lebanon to assimilate. Lebanon's economic situation was precarious: the country had a great deal of debt and had endured a very harsh civil war. A very delicate political

balance had been inherited from the French mandate. If the Palestinians were given citizenship, it could be up to 10% of the population and would involve a dramatic shift in the delicate political balance. The refugees had been accepted on the basis of the contribution of UNRWA. The material needs of the refugees had to be looked after by that organisation and not by the state of Lebanon. If there were discrimination it could be a question of whether there was a justification of reasonable and objective grounds, as referred to in Karakurt, cited by Mr Southey. It was not suggested that this was laudable or acceptable in moral terms, and it placed great strains on the Palestinians, but the historical basis and UNRWA's support, together with Lebanon's precarious economic and political balance, arguably gave rise to such a justification.

71. As regards the risk of arbitrary detention, Lebanese citizens in general were equally at risk. If that were not so, on the basis of Dr George's evidence it was entirely understandable why in the camps the risk was enhanced given the background of armed militias and fear of a build up of military presence and the need for weapons searches.

72. As regards the point concerning personal impact on the appellants themselves, it seemed that none of the three claimed to have suffered specifically in any particular way from the general conditions. In the cases of 'H' and 'K' there was a claim to fear persecution arising from fear of particular factions in the camps, but on appeal the complaint was that the Adjudicator had not dealt properly with the objective expert reports as respects their particular situation. There was no complaint that the Adjudicator had failed to deal with the argument that the general conditions would impact on them. For example, neither of these appellants said that when they lived in the Lebanon they were subject to arrest or poor living conditions. In the absence of such evidence it was dangerous to generalise from the objective evidence to say that all these things would apply to any particular appellant. In this regard the Tribunal was referred to Gashi. Ill treatment which might be persecutory would be persecutory if it rendered life intolerable for the person concerned. It was a question of real risk, of course, but it was necessary to look at the person's history to assess present risk and not enough to say that one should look at what happened generally in the camps, and particularly what happened to this person. It raised a subjective fear. UNHCR's position was based on the impact on an individual. There was no deliberate policy of ethnic cleansing here and a much lower level of impact than was the case in Gashi. It was complicated by the fact that the Lebanese government's approach to Palestinians was one side of the coin but the other was support from the UNRWA. It was generally argued, therefore, that the appellants had not been able to show any specific general impact on them and not enough to say

generally that as ethnic Palestinians they were at risk. 'H's history was relevant in this regard. Their treatment did not cross the threshold of asylum claims as a group.

73. Concerning Article 3, the Tribunal was referred to the skeleton. Tesema did not help with regard to the Article 3 test. The Tribunal was referred to parts of the judgment of Laws LJ, who had dissented but with whose judgment the majority had agreed on this point, in particular, at page 25 paragraph 38, concerning the spectrum of Article 3 interference. The Tribunal was also referred to its earlier decision, a copy of which was found in Ms Laing's bundle at tab 3 in El Deaibes, which had found against an appellant in a similar situation. As regards discrimination on grounds of race, the Tribunal was referred to the skeleton with regard to the East African Asians case. The circumstances in that case had been exceptional. Article 14 of the European Convention dealt with discrimination and most discrimination cases arose there rather than under Article 3.

74. As regards the credibility points, submissions were to be found on this in the skeleton argument. Mr Southey's submissions in this regard came close to requiring reasons for reasons. The findings were sound. If the Tribunal disagreed then the appeal would need to be remitted to the Adjudicator especially in 'H's appeal if it turned on specific factual inconsistencies in his evidence.

Response by Mr Southey

75. By way of reply, Mr Southey accepted that there were problems for Lebanese in Lebanon with regard to such matters as arbitrary arrest, but the evidence showed that it was significantly worse for Palestinians. The use of the word 'arbitrary' indicated no justification rather than it being justified as Ms Laing contended. As regards Ms Laing's criticisms of Mr Joffe, the question was when the report was written. Concerning the claimed inability to move to a different camp, Mr Joffe said it was relatively soon before his report was produced so it did not undermine his evidence. Mr Joffe had been quite careful to say that there could be a significant risk of ill-treatment for anyone in the camps but left the question to the Tribunal. It was quite proper to say that the conditions were 'life threatening' as Dr George had, given the public health problems and the reduced life expectancy.

76. As regards the point that it was not racial discrimination, this was true of some treatment but it was mainly aimed at Palestinians. Ms Laing then considered the justification, so it was contended that it was racial discrimination. There was clearly a distinct racial group. As regards whether it was not necessarily unlawful, the various Conventions cited came into play at that point. It was relevant because the United

Kingdom was determining asylum standards and had to assess the behaviour of other states against accepted human rights standards. It was not just a matter of what treaties a state had signed, as it would be possible to avoid human rights responsibilities by not signing all treaties if that were the case. The Statelessness Convention was therefore relevant as evidence of accepted standards of behaviour in the international community. In any event, the other international material limited discrimination even if the Statelessness Convention fell away.

77. As regards Ms Laing's point concerning personal impact, it should be questioned whether it was necessary to show that it was so intolerable that they felt obliged to leave. The Tribunal was referred to paragraph 12 in the Adjudicator's determination in 'H's case, which came very close to an acceptance of why he had left Lebanon and the reference to intolerable conditions in the camps. The Tribunal was referred again to Gashi, at page 110B. If the objective case was made out then it would be odd for an individual not to fear, and it was necessary to look to the future. Clear evidence of a systemic failure to provide for the human rights of a group was enough to enable a person to fall within the group.

78. As regards Limbuela, it was necessary to be cautious with regard to the context but it was not a racial discrimination case. It could be seen that where it affected most of the key aspects of everyday life it was sufficient. There was specific targeting of some people with regard to the facilities offered to others. El Deaibes did not necessarily involve the same volume of evidence of experts and detailed submissions so it was of limited assistance only. As regards the credibility point, the Tribunal was urged if it did decide to remit, to remit to a different Adjudicator.

Response by Mr Cantor

79. By way of reply, with regard to discrimination and non-citizens, Mr Cantor reminded the Tribunal of the UN reports he had put in which took that into account but still said that the discrimination against Palestinians was unlawful.

Findings of the Tribunal

80. We consider first the objective evidence concerning the situation for Palestinians living in the Lebanon and then we shall go on to consider in the light of that evidence whether there is a real risk that the return of any, some or all of these appellants to the Lebanon would breach their rights under the Refugee Convention or Human Rights Convention.

<u>The general position for Palestinians in Lebanon</u>

81. In the UNRWA website, at page 91 of Mr Southey's bundle, the number of Palestinian refugees registered with UNRWA in Lebanon is stated as at 1 May 2003 as being 382,973. The UNRWA was set up as a Special UN Agency in 1949 with a remit to assist Palestinian refugees in the host countries, which of course includes Lebanon. The UNRWA's responsibility to the refugees in the camps is described by it as being limited to providing services and administering its installations. The UNRWA does not own, administer or police the camps as this is the responsibility of the host authorities. The camps are on plots of land placed at the disposal of the UNRWA by the various host governments for accommodating Palestinian refugees and for setting up facilities to cater for their needs. We note from page 93 of Mr Southey's bundle that the UNRWA describe themselves as also maintaining schools, health centres and distribution centres in areas outside some camps where Palestinian refugees are concentrated. All of the agency's services are available to both camp and non-camp (Palestinian) residents. It seems that about one-third of the registered Palestinian refugees live in the various recognised refugee camps in the Lebanon and Jordan, Syria, the West Bank and the Gaza Strip, and the other two-thirds live in and around the cities and towns of the host countries, often in the environs of official camps. Paragraph 6.21 of the Home Office Country Information Bulletin on Lebanon of February 2004, taking information from the Lebanon Refugee Camp Profiles of November 2003 which seems to be a UNRWA document, states that the UNRWA runs some seventy-nine schools with approximately 42,259 enrolled pupils in the 2001-2002 academic year in Lebanon. It also says that the agency also operates twenty-five primary health care facilities in Lebanon and it provides emergency aid to families unable to support themselves.

82. UNRWA describes the situation of Palestinian refugees in Lebanon as involving them facing specific problems. They do not have social and civil rights and have a very limited access to the government's public health or educational facilities, and no access to public or social services. The majority rely entirely on UNRWA as the sole provider of education, health and relief and social services. They are considered as foreigners and prohibited by law from working in some seventy-two trades and professions which has led to high levels of unemployment among the refugee population. It seems that popular committees in the camps representing the refugees regularly discuss these problems with the Lebanese government or with the UNRWA officials. As we say, UNRWA provides services and administers its own installations and has a camp services office in each camp which residents can visit to update records or raise issues about services with

the camp services officer who will refer petitions etc. to the UNRWA administration in relevant areas. It is said that socio-economic conditions in the camps are generally poor. There is a high population density and there are cramped living conditions and an inadequate basic infrastructure as regards matters such as roads and sewers. As we have noted above, some two-thirds of registered refugees live in and around cities and towns.

83. As Ms Laing pointed out in her submissions to us, the objective evidence is generally not in dispute. There were, however, some specific matters in relation to which she drew our attention and in relation to which Mr Southey responded, and it is appropriate that we dealt with those matters now. Some of these related to matters which Mr Southey argued involved significant distinctions between how Palestinian refugees in Lebanon were treated in contrast to Lebanese citizens. For example, he made the point at paragraph 2.2 of his skeleton that Palestinian refugees are subject to arrest, detention and harassment by state security forces. Ms Laing made the point that, according to page 76 of Mr Southey's bundle, the security forces continued the practice of arbitrary detention and arrest generally in Lebanon and therefore there was no real distinction between the situation of the Palestinians and the Lebanese citizens.

84. We see force in Ms Laing's point here. Arbitrary detention and arrest appear to be a general problem and we see no distinction in effect between the situation of the refugees and nationals in that regard, on the basis of the evidence in the State Department Report. As regards restrictions on freedom of movement, Mr Southey points to paragraph 2.3 of his skeleton, where it would appear that at least the Syrian checkpoints apply equally to Lebanese citizens and Palestinians and the same level of risk of harassment and ill-treatment appears to exist. It may ultimately be a matter of no more than degree, although we do see force in Ms Laing's point that the country assessment on which Mr Southey relied refers to freedom of movement for Palestinians as being restricted whereas he described it as being profoundly and arbitrarily inhibited in his skeleton. The Amnesty International report at pages 104 to 106 in the bundle describes Palestinians' freedom of movement as being restricted. The phrase employed by Mr Southey appears to be taken from page 16 of his bundle which forms part of Mr Joffe's report on 'K'. Given the contrast between that and the Amnesty and the Home Office evidence we consider that Mr Joffe's evidence in this regard is somewhat overstated. Again, though, we do not consider that a great deal turns on this.

85. As regards Mr **S**outhey's paragraph 2.7 concerning the ability of Palestinians to live outside the camps, as Ms Laing pointed out, there is a lack of certainty concerning the numbers of Palestinians living inside

and outside the camps. The evidence of Dr George was that there was a degree of blurring in this regard as to whether people are living inside or outside the camps, given the apparent extension unofficially of the boundaries beyond the camps. We note the point at page 3 of the Amnesty Report headed 'Economic and Social Rights of Palestinian Refugees' handed in to us by Mr Southey on the day of the hearing, which refers among other things to a number of unofficial Palestinian refugee camps in Lebanon. The conditions in those camps appear from the evidence of that report to be particularly bad, and therefore it would appear that there is an ability to live outside the camps, but the quality of that life must of course be a factor to be borne in mind.

86. As regards the experts, Mr Joffe, as we have noted above, accepted that he was wrong in his report to doubt the ability of Palestinians to move to different camps. He seems first to have stated this in his report on 'H' which is dated 1 June 2002. At paragraph 6.25 of the Country Assessment to which we have referred, it is stated that Palestinian refugees in Lebanon are free to relocate from one camp to another although their freedom of movement can be restricted. Mr Southey argued that Mr Joffe said that the information was to be found in a Country Assessment shortly before his report was produced so it did not undermine his evidence. However, we note that the first source cited in the Country Information Bulletin for this statement is a letter from the British Embassy, Beirut regarding Lebanon Palestinian Refugees dated 23 August 2000. We also note that the same statement was made in paragraph 6.26 of the Lebanon Country Assessment of October 2001. It appears that Mr Joffe was unaware of this evidence. We consider also that the fact that he has never visited a Palestinian camp in the Lebanon and Dr George did so only once in 1996, is a matter that is not without relevance to the authority of their evidence. We find surprising Mr George's statement that he can better monitor the Middle East from London than on the ground as people speak more freely in London. Although we accept that there may be a diminished degree of inhibition in such circumstances, we consider that a person would be far more likely to be able to get a realistic feel for the conditions in the camps had they actually visited them at all, in Mr Joffe's case, and more recently than 1996 in Dr George's case. We also find ourselves in agreement with Ms Laing concerning the occasional sweeping generalisation to be found in the evidence of Mr Joffe and Dr George. We do not consider that it can properly be said, as was contended by Dr George, that conditions in the camps are life threatening generally. We return to this point in some detail below, but our view is that although there is evidence as we have described briefly above - for example from the UNRWA at page 91 of Mr Southey's bundle - concerning the serious problems in the camps, to regard the circumstances in the camps as life-threatening is excessive

and objectively unfounded, having regard to the information in the international reports provided to us.

87. Otherwise, and in general, the evidence of Mr Joffe and Dr George was essentially consonant with the various country reports of specialist bodies, and, to return to Ms Laing's point which we indicated earlier, the core of the objective evidence is essentially agreed. It is, however, appropriate in our view that we make the comments that we have above about the points of difference.

88. We turn to the specific conditions of Palestinians within the camps and outside. As we have noted above, the majority of the Palestinians rely entirely on UNRWA as the sole provider of education, health, and relief and social services. The USCR report referred to in Dr George's report confirms that Palestinians are denied access to Lebanese health care and other social services, and most are unable to attend Lebanese schools and universities. It seems that primary education is regarded as satisfactory but less so as regards the secondary level. We note in passing, however, from 'H's statement that he went to primary school from the age of six to twelve and then to the camp secondary school from the age of twelve to fifteen, and then went on to a training college where he studied car mechanics for two years. 'K' had his school education in Kuwait but enrolled on a two year course in business administration at the same training centre as did 'H'. 'E' appears not to have given any details of any education or training that he had. Nevertheless the experiences of 'K' and 'H' are not without relevance with regard to the general issue of education provision. Although, as Mr Southey pointed out, the issue is not central before us, given the ages of the appellants, it is relevant to the impact of discrimination upon the community generally, a matter to which we shall return below.

89. The evidence is clear that Palestinians have only a limited access to the government's public health service. Essentially, they are reliant upon UNRWA as the provider of health services in the absence (generally) of ability to pay for private health care and their exclusion from the facilities of the Lebanon state. Dr George described the facilities provided by UNRWA as being very basic, apart from perinatal facilities. He contrasted them with the facilities provided by the state which were far from being up to western standards but were clearly better. It is said in the Amnesty International Report, 'Economic and Social Rights for Palestinian Refugees', to which we have referred above, that there appeared, due to budget limitations, to be a reduction in the provision of medical services and a denial of specialist medical services for the over-60s. We remind ourselves of the point to which we have referred above that the UNRWA operates twenty-five primary health care facilities and also provides emergency aid to families unable to support themselves. We note from the US Committee for

Refugees Report of 1999 in Mr Southey's bundle, that the UNRWA were said, at least at that time, to contract for thirteen Lebanese general, mental and tuberculosis hospitals to provide hospital care. It is said that the UNRWA cannot respond to many refugee health care needs due to a growing refugee population, rising health care costs and insufficient funding. It is said also that the Palestinian Red Crescent Society provides health care services to Palestinians refugees but again it is described as acutely underfunded.

90. It is clear that construction in the refugee camps is prohibited. As a consequence it is said that most Palestinians live in poverty in breeze block shelters.

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

92. The previous policy of the government of denying work permits to Palestinians was brought to an end in 1991. In practice, however, it seems that few Palestinians receive work permits and these are mainly for unskilled occupations. As we have noted above, Palestinians are banned from working in seventy-two skilled professions, and obtaining work is an ongoing problem. It seems that foreigners (i.e. non-Lebanese nationals) may be able to work within the list of trades and vocations restricted ostensibly to Lebanese nationals, based on the exercise of discretion by the Ministry of Labour, founded on requirements of 'public interest' and 'reciprocity of treatment'. The latter is understood, according to the Amnesty document at page 6, to refer to reciprocal treatment granted to Lebanese nationals by a recognised state. This clearly is not open to Palestinians since they are stateless. It is however unclear from the evidence whether the Syrians and other non-Lebanese who work in significant numbers in Lebanon are able to fulfil this requirement, as we have not been told that there are reciprocal arrangements in place in Syria or the other countries available to Lebanese nationals. This same point can be made with regard to rights to social security. Again, Palestinians cannot qualify, given their inability to provide reciprocity of treatment, but again we are unclear as to the situation with regard to nationals of other states working in Lebanon. As regards the purchase of land, as we have noted above, it is clear that Palestinians do not have a right to do so in Lebanon or indeed to inherit land. It appears, however, that all

nationals of recognised states can acquire or inherit property in Lebanon, according to page 5 of the Amnesty document, and there is clear discrimination in that regard. It is said in the State Department report at page 86 of Mr Southey's bundle that the Lebanese Parliament has justified this law on the grounds that it is protecting the rights of Palestinian refugees to return to the homes from which they fled after the creation of the State of Israel in 1948. It is also said in this regard that other foreigners may own a limited size plot of land but only after obtaining the approval of five different district officers, and that the law applies to all foreigners but it is applied in a manner disadvantageous to the 25,000 Kurds in the country.

The general position for Palestinians in Lebanon under the RC and ECHR

93. We turn to the legal arguments. In essence it is argued on behalf of the appellants in these three cases that the conditions endured by Palestinians in the Lebanon, to which these three appellants would be exposed on return, are such by their nature and in particular with regard to their discriminatory nature to give rise to a real risk of persecution or breach of their human rights and specifically in this regard Article 3 is pleaded. At paragraph 16 of Mr Southey's skeleton it is contended that the discrimination against Palestinians in Lebanon is sufficiently serious as to entitle them to refugee status and/or protection under the Human Rights Convention.

94. The first point made is that the discrimination in part relates to matters coming within the second category of rights as identified by Professor Hathaway in his book 'The Law of Refugee Status', which includes the right to freedom from arbitrary arrest and equal protection for all. In this regard we do not consider, as we have stated above, that the evidence shows that Palestinians in particular are exposed to risk of arbitrary arrest. Certainly that is not likely to happen within the camps, given the abdication of any responsibility for protection within those camps on the part of the Lebanese authorities. Outside the camps it appears that a Palestinian proposing to move around Lebanon would be at no greater risk than a Lebanese citizen from Syrian checkpoints, although it appears that he might be at greater risk at a Lebanese checkpoint. In this regard we see force in Ms Laing's point that given the historical problems, in particular with the camps wars involving armed militia, and the civil war, that such detention and questioning of Palestinians as takes place at Lebanese checkpoints has a significant degree of justification to it in light of the understandable concerns that the authorities might have. As regards the point concerning equal protection for all, it is the case, as Mr Southey contends, that the Lebanese authorities do not attempt to assert their authority in the camps, and it is the case that violence is a problem of some significance in the camps. Ms Laing made the point

that the situation is not a normal situation given the extent to which there are armed factions to be found on Lebanese territory, but that does not in our view amount to the existence of a public emergency threatening the life of a nation whose existence has been officially proclaimed, which is the only basis upon which it is said that second category rights can be denied.

95. The next point made by Mr Southey in his skeleton is that there is significant discrimination in relation to matters coming within Professor Hathaway's third category, this being rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic Social and Cultural Rights, and including such matters as the right to employment, housing and medical care. Professor Hathaway concluded that discriminatory denial of these rights or denial of these rights, despite fiscal ability to respond, may amount to persecution. It is also said to be the case that denial of the right to employment, housing and medical care can in an extreme case, amount to cruel and inhuman and degrading treatment which crosses the threshold of persecution. The limitations on relief under the Refugee Convention, and by analogy under the Human Rights Convention, are clearly expounded in Professor Hathaway's book, including the limitations on education provision and health care before the relevant Conventions are engaged at all, and the severe limitations on the right to work including the provision of the support available in the present case from UNRWA.

96. In this regard it is clear that it can in practice be difficult for Palestinians to live outside the camps, which in effect requires them for the most part to live in the very substandard accommodation in the camps, and restrictions on employment deny them the funds necessary to purchase services on a private basis. The denial of these rights is, Mr Southey contended, not based on any fiscal considerations, but rather on the basis as we have described above, of a political reason, this being the desire to protect the rights of Palestinians to return to their homeland. He further makes the point that the absence of any fiscal justification can be seen from the fact that foreign nationals are at least in some circumstances, given greater rights.

97. In this regard Ms Laing argued that differential treatment as between nationals and non-nationals in relation to access to economic, social and cultural rights in Professor Hathaway's third category cannot amount to discrimination in the sense necessary to establish persecution, and also contends that the same principle applies to the treatment of stateless persons. She argued that an individual cannot establish by such generalised evidence of differential treatment that he is at risk of persecution in his country of habitual residence. Her alternative argument was that discriminatory denial of access to

benefits can only amount to persecution if the measures involved are of a substantially prejudicial nature and affect a significant part of the individual's existence such as to make his life intolerable were he to return and he must be able to point to something which has exceptional impact on him personally.

98. In this regard Ms Laing attached some significance to the personal histories of the appellants, and in particular those of 'K' and 'H'. Indeed, she argued that none of the three claimed to have suffered specifically in any particular way from the general conditions about which complaint is made. We have already noted their personal histories concerning such matters as education and training insofar as there was evidence in that regard. Whilst noting the point made by Dr George that there is (to a degree) an absence of detailed information in their statements about those issues, equally it can be said that they have had the opportunity to state what it was that caused them to fear return to Lebanon and in none of the three cases did they advert to the general conditions for Palestinians in Lebanon as factors relevant to their claims. We are conscious that it was said by the Tribunal in Gashi that if an Adjudicator accepts that there is objective fear, to hold nonetheless that fear (in any sense of the word) is absent is hard to contemplate. That, however, is a view in which the factual histories of the particular claimants can properly be taken to inform the general position. Certainly in the case of 'H', he received both an education and training in the Lebanon, and in the case of 'K', who received his education in Kuwait, he received subsequent training in the Lebanon. In both of their cases, therefore, it must be of some significance to their futures in Lebanon that at least they have experienced a degree of training which should assist their employment prospects. In any case, therefore, the specific history of the particular claimant must be taken into account in assessing the general situation and the degree of likelihood that what he or she will experience on return to Lebanon would be persecutory or in breach of his or her human rights.

99. Ms Laing went on to argue that differential treatment of nationals and non-nationals in relation to access to economic, social and cultural benefits does not amount to persecution, firstly on the basis that as a matter of international law it is for the host country to regulate access and residence of aliens, including rights to employment, education, housing and welfare, and that restrictions placed on aliens in exercise of this power cannot be classified as discrimination because the comparators are not in an analogous position; secondly, that access to social and cultural benefits is dependent on the available resources and the state must be free to provide first for its own citizens before aliens and it is important to bear in mind the low standard of living in Lebanon; and thirdly, that this principle is recognised in international and domestic law. Mr Southey referred us to the Statelessness

Convention which among other things includes a right to employment, a right to housing, a right to public relief and assistance, a right to enter the liberal professions and a right to freedom of movement. Such rights as the right to employment and the right to housing prohibit discrimination insofar as they require the stateless to be treated in the same manner as aliens and the right to public relief requires the stateless to be treated in the same manner as nationals. Article 32 of the same Convention requires contracting states (Lebanon is not a contracting state) as far as possible to facilitate the assimilation and naturalisation of stateless persons. The point is also made by Mr Southey that Article 7 of the UN Convention on the Rights of the Child provides among other things that the child has a right to acquire a nationality, and it is contended that the appellants should have been granted Lebanese nationality.

100. In response to these arguments Ms Laing pointed to the particular circumstances of Lebanon. Lebanon accepted a large number of stateless people in 1948 and 1949, and this assimilation has proved to be extremely difficult, particularly bearing in mind the precarious Lebanese economic situation and the very delicate political balance, a matter which can be seen in 'H's case with regard to the political organisation of Lebanon. Ms Laing argued that suddenly giving citizenship to the Palestinians who comprise some 10% of the population would have a significant effect on the delicate political balance. Lebanon has accepted the presence of the refugees on the basis of the support that would be provided and the facilities provided by UNRWA who in effect take care of their material needs. She argued that it was relevant to consider the case of Karakurt v Austria, a decision of the Human Rights Committee, enabling justification on reasonable and objective grounds for Lebanon's treatment of Palestinians. Mr Southey in his skeleton contended at paragraphs 22.1 to 22.4 that there is no reasonable and objective justification for the discrimination on the basis firstly that other foreign nationals are not discriminated against by the Lebanese authorities in the same manner as Palestinians, secondly, that the purported justification is a concern that Palestinians should be able to return to their home areas and there is no reason why the Lebanese state should decide whether assimilation would harm the prospect of Palestinians who wish to return; thirdly, that the Palestinians have been in Lebanon for over fifty years and it is disproportionate now to deny them rights on the basis that they might return; fourthly, that the genuine justification is a concern regarding the religious mix in Lebanon.

101. As regards these points, as we have noted above, although there is an extent to which under Lebanese law other foreign nationals are not discriminated against to the same extent in Lebanon as the Palestinians are, there is a lack of evidence in regard to particular matters as to

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

102. Article 2(3) of the International Covenant on Economic, Social and Cultural Rights, which is again cited by Mr Cantor and Mr Southey, states as follows:

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

103. Ms Laing also relied on this provision in arguing that differential treatment of nationals and non-nationals in relation to access to economic, social and cultural benefits not amounting to persecution is recognised in international and domestic law. Mr Southey emphasised the clause 'with due regard to human rights' as indicating that discrimination is not lawful if it is outlawed by a Convention such as the Statelessness Convention. Mr Cantor makes the point that, as is said by the UN Special Rapporteur at paragraph 19 of the UN report, 'Prevention of Discrimination – the rights of non-citizens' at page 8 of his skeleton argument, that Article 2(3) must be narrowly construed

and may be relied upon only by developing countries and only with respect to economic rights.

104. We are not sure to what extent a report of the UN Special Rapporteur can be said to qualify or give binding guidance on the meaning of a provision in an international agreement, and also we have not heard argument on whether Lebanon can be described as being a developing country, although we consider that it can probably properly be so described. If that is right, then even with the Special Rapporteur's restriction, the construction would cover economic rights if not social and cultural rights, and we do not consider that it can properly be said that the obligation to pay due regard to human rights in the context of Article 2(3) precludes any discrimination which is outlawed by a Convention such as the Statelessness Convention. We note the point made by Ms Laing at paragraph 9 of her skeleton that the Statelessness Convention provides that contracting parties should accord a stateless person treatment as favourable as possible and in any event not less favourable than that accorded to aliens generally in the same circumstances, for example, in relation to wage earning employment, self-employment and housing, and that in relation to free movement, stateless persons are also subject to the regulations applicable to aliens generally. There is in our view force in the submission at paragraph 10 of her skeleton that the treatment of aliens or stateless persons different from and less favourable than that accorded by the state to its own citizens, does not of itself amount to persecution, and in this context we bear in mind the distinctions that have been pointed out to us between the treatment of Palestinians in Lebanon on the one hand and citizens of other states in Lebanon on the other hand.

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

106. Having considered these matters as a whole, as we have done in some detail above, we have concluded that to the extent that there is a

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

107. In many ways what we have to say about Article 3 follows from what we have concluded concerning the Refugee Convention claim in this case. As Ms Laing argued in her skeleton, there are two strands to this argument, one based on living conditions in the camp, and the other on the discrimination practised by the Lebanese authorities. We have derived some assistance from Q and T, the decisions referred to in the skeleton, and also to a limited extent from Tesema. We bear in mind the limitations of those cases being concerned as they are with matters essentially relating to the situation in the United Kingdom. We consider, however, that there is relevance in Ms Laing's summary at paragraph 19 of the skeleton, that though poor, the appellants would not be destitute in Lebanon. They would have somewhere to live, albeit not in ideal conditions, and they would have access to, albeit fairly basic, medical facilities and in the case in particular of 'H', it is likely that he would find work. The threshold in Article 3 is a high one, as the Court of Appeal has recently reminded us in N [2003] EWCA Civ 1369. We agree with Ms Laing that the East African Asians case can properly be distinguished from this case, in particular in the absence of the three factors set out at paragraph 24 of her skeleton, discrimination on grounds of race between nationals of the same country, any element of subverted legitimate expectation and the degree of physical difficulty and legal impossibility attaching to continued residence in Palestine which the applicants in that case experienced in East Africa. Moreover, the international covenants to which we have referred contain, in contrast to the absolute nature of Article 3 of the ECHR, clear derogations and areas of appreciation. They are in many instances exhortatory and aspirant of an ideal, for that reason necessarily requiring modification in its application, as recognised by the covenants. Before any breach of such covenants could properly be regarded as a breach of the provisions of the European Convention which bind the UK, there would require to be such flagrant denials as would result in the high threshold imposed by Article 3 being breached. In the circumstances, therefore, we consider that the Article

3 threshold would not be crossed in any of these cases on the basis of general attitudes in Lebanon towards Palestinians.

Second Appellant – Credibility

108. The Adjudicator made an adverse credibility finding in 'H's appeal and the grounds of appeal at paragraphs 3.1 to 3.4 deal with that. The grounds asserted that the Adjudicator gave inadequate reasons for finding 'H' was not a credible witness. The representatives in 'H' appeal both agreed that was the case and accordingly there is no alternative but to remit that appeal for a fresh hearing before an Adjudicator other than Mr D.M. Wynn-Simpson. The new Adjudicator will of course have the benefit of this decision in relation to issues of discrimination in the Palestinian camps generally.

DECISIONS

First Appellant
The appeal is dismissed

Second Appellant
The appeal is allowed to the extent that it is remitted for a fresh hearing before an Adjudicator other than Mr D.M. Wynn-Simpson.

Third Appellant
The appeal is dismissed

D.K. ALLEN
VICE PRESIDENT