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FB (Removal Directions - Section 69(1) Appeal) Lebanon [2003] UKIAT 00104
Heard at Field House
On 8 October 2003
Dictated 8 October 2003

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

28.10.2003

Before:

Mr Richard Chalkley (Chairman)
Mr C Thursby

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Mr D Medhurst, Counsel, instructed by Aaronson & Co, Solicitors, appeared on behalf of the appellant and Mr Colin Flynn, a Senior Home Office Presenting Officer, appeared on behalf of the respondent.

DETERMINATION AND REASONS

1. The appellant appeals with leave of the Tribunal against the determination of an Adjudicator, Mr Mark Davies, who in a determination promulgated on 16 April 2003, following a hearing at Leeds on 28 March 2003, dismissed his appeal against the decision of the respondent taken on 6 December 2002 to refuse leave to enter after refusing asylum. His appeal was therefore under Section 69(1) of the 1999 Immigration and Asylum Act.

2. The appellant is an ethnic Palestinian born on 14 May, 1956 in Lebanon who, until his arrival in the United Kingdom on 8 October

2002, had, since 1976, lived in the United Arab Emirates. He was granted a United Kingdom visit visa on 4 June 2002 in Abu Dhabi. The visa was for six months and expired on 4 December 2002. In granting leave, the Vice President said:

> *"The only issue worthy of merit is returnability to the UAE, whether at the date of the Adjudicator's determination or now, in view of the expiry of his residence permit. Therefore the grant of leave is limited to grounds 1.3 and 1.4."*

3. Ground 1, paragraph 3, said:

> *"The Adjudicator erred at paragraph 53 in finding that the appellant and his family can return to the UAE. At Annex E5 of the Home Office bundle [the appellant's] period of residence is recorded as expiring on 20/6/03 however [the appellant] stated in evidence that his leave would in fact expire six months from departure from the UAE. This is confirmed in the small print on the travel document at E5 which states "residence permit becomes invalid if bearer resides outside the UAE for more than six months". The six month period expired on the date of the determination, i.e. 7/4/93, [the appellant] having left on 7/10/03 (E5 stamp unclear but see E4 and fact that UK port interview took place on 8/10/02). Therefore at the time of the Adjudicator's decision [the appellant] had no right of residence in the UAE. [The appellant's] residence was granted purely for work purposes, he was not allowed to own property in UAE and would not be able to reside there without an existing job, interview at D6q.32-34 and determination paragraph 37."*

4. Ground 1, paragraph 4, said:

> *"In the circumstances the removal directions to UAE were ineffective at the date of the determination. [The appellant] is currently in no sense a UAE national or resident and as such removal there would not be in accordance with the law. [The appellant] was entitled to have the issue of nationality properly decided by the Adjudicator, see* ***Agatha Smith (00/TH/02130)*** *at para 55."*

5. In addressing us, Mr Medhurst suggested that the Adjudicator failed to make a finding that the appellant had been habitually resident in the United Arab Emirates but for the reasons stated in the grounds of appeal, this appellant will not be re-admitted to the United Arab Emirates since his residence permit has now expired and he no longer has a job there. He will not, therefore, be entitled to apply for a fresh residence permit.

6. The Tribunal pointed out to Mr Medhurst that it had been the appellant's claim, which was unchallenged by the respondent, that the appellant had lived in Lebanon since 1976 when he had embarked from the United Arab Emirates to the United Kingdom. It appeared to the Tribunal that there was power in law to remove the appellant to the UAE and the fact that he may not be admitted to the UAE was an administrative difficulty, but not one which rendered the removal directions unlawful. Mr Medhurst responded by suggesting that since the Adjudicator had failed to make a finding that the appellant was stateless the determination

was defective. The appellant's former residence permit had expired. He had been granted a residence permit because he was working in the UAE but no longer had a job there and would not be re-admitted.

7. Mr Flynn reminded us that this was an appeal under Section 69(1) of the 1999 Immigration and Asylum Act. It was the appellant's claim that he had resided in the UAE for some 26 years. He is not stateless; he travelled on a Lebanese travel document issued to him. There was no evidence before the Tribunal to show that were the appellant to return to his former habitual residence he would not be granted renewal of his residence permit and he has simply failed to show that he would be refused entry. Mr Medhurst responded by suggesting that the appellant was not a Lebanese citizen and has no nationality. He was, therefore, stateless and the Adjudicator should have decided the issue of his nationality.

8. We reserved our determination.

9. We have concluded that we must dismiss this appeal. We now give our reasons.

10. This is a Section 69(1) appeal. If it had been an appeal against a decision to give removal directions (as opposed to a decision to refuse leave to enter) *and* the appellant had raised a Section 67(2) appeal, we would then have had jurisdiction to consider the validity of the removal directions to the United Arab Emirates. That, however, is not the case. The appeal is brought, as we have said, under Section 69(1), against a decision to refuse leave to enter. Even if the country of removal specified in the notice of the decision to refuse leave to enter is not one to which the Secretary of State is entitled to remove the appellant (and, for the reason given in paragraph 11 below, we do not find that this has been shown), this would not invalidate the decision to refuse leave to enter.

11. In any event, the appellant embarked from the United Arab Emirates for the United Kingdom. The Secretary of State is empowered, under Section 8(1)(c) of Schedule 2 to the 1971 Act (now see Rule 4(2) of the Immigration (Removal directions) Regulations 2000) to remove a person to the country or territory in which he embarked for the United Kingdom.

12. Removal directions can be set for a country even if it is uncertain whether the authorities of that country would admit the individual – see **Andrei Pavlov [2002] UKIAT 02544**. The possibility that a person may not be admitted by the receiving country, is a practical obstacle to re-admission – see **[2003] UKIAT 00016L** – but this does not invalidate the decision of the Respondent.

Furthermore, it is not necessary for the Appellant to be readmitted for settlement. It is therefore not relevant for us to consider whether, if the appellant were to apply for a renewal of his residence permit in the United Arab Emirates, this would be granted or refused.

13. Accordingly, we have concluded as follows: firstly, that we do not have jurisdiction to consider the validity or otherwise of the Secretary of State's decision to specify in the notice of the decision to refuse leave to enter the United Arab Emirates as the country to which the appellant would be removed; and, secondly, that, even if we did have such jurisdiction, the Secretary of State's decision to specify the United Arab Emirates as the country of destination is lawful.

14. As to the issue of nationality, it is not enough for a claimant to simply assert that he is stateless. He must prove that he is stateless, to the low standard of proof. The principle in **Bradshaw [1994] IMM AR 359** applies. Save where there are serious obstacles, it is incumbent upon a claimant to make an application for nationality and furnish evidence as to the outcome of such an application. In this case, the appellant has not made any application for Lebanese nationality. We note, however, that a Lebanese travel document was issued to him. On the evidence before us, we are not satisfied that the appellant has established that he is stateless.

15. In any event, we are of the opinion that the issue of nationality in this particular case does not affect the outcome of this appeal. This is because, even if he is stateless, the fact is that, by his own evidence, he was formerly habitually resident in the UAE. Mr. Medhurst sought to suggest that the Adjudicator had not made a finding that the appellant was habitually resident in the UAE. However, it is the appellant's own evidence that he lived in the UAE from 1976 until he embarked for the United Kingdom. Whilst the Adjudicator had not made a specific finding that the appellant's former habitual residence was the UAE, it is clear from a reading of the Determination that the Adjudicator had accepted the appellant's evidence that he had lived in the UAE from 1976 until he left the UAE to come to the United Kingdom and, indeed, it has never been in dispute.

16. Since the notice of the decision to refuse leave to enter states that removal will be made to the UAE, this sets the scope of the appeal. Although a removal direction was not an essential feature of a notice of a decision to refuse leave to enter (as it would have been if the decision had been one to give removal directions), it did provide the focus of the grounds of application under Section 69(1) – see **Slavisa Kojic [2002] UKIAT 05114**.

This means that this appeal falls to be determined on the following basis:

(a) whether the appellant has a well-founded fear of persecution in the UAE; and

(b) if there is a risk that he will be refouled from the UAE to some other place, whether he will be refouled to a place in which he does have a well-founded fear of persecution, in this case, Lebanon?

17. In relation to (a) above, the Adjudicator found, at paragraph 54, that there was no evidence to suggest that it was reasonably likely that the appellant had a well-founded fear of persecution or of his human rights being breached on return to the UAE. The Adjudicator has given clear and logical reasons for his findings, which, on the evidence before him, were open to him.

18. In relation to (b) above, the Adjudicator found in paragraph 60 of his determination that the appellant and his family could return to Lebanon without risk of breach of either Convention.

19. For all these reasons, the appeal is **dismissed**.

Richard Chalkley
Vice President