**FIRST-TIER TRIBUNAL**
**ASYLUM SUPPORT**

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Appeal Number AS/12/11/29199
UKBA Ref. 04/09/00056/014
Appellant's Ref.

**IMMIGRATION AND ASYLUM ACT 1999**
**THE TRIBUNAL PROCEDURE (FIRST-TIER TRIBUNAL)**
**(SOCIAL ENTITLEMENT CHAMBER) RULES 2008**

| | |
|---|---|
| Principal Judge | Sehba Haroon Storey |
| Appellant | MR UA |
| Respondent | Secretary of State |

## STATEMENT OF REASONS

1. This Statement of Reasons is made in accordance with Rule 34(1) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008, and gives reasons for the decision given on Friday the 15th day of February 2013 allowing the above mentioned appeal.

2. The appellant, a 26 year old Palestinian appeals against the decision of the Secretary of State (SSHD) dated 1 November 2012, refusing his application for asylum support under Section 4 of the Immigration and Asylum Act 1999, as amended (the 1999 Act). The reasons for refusal are that the appellant is not destitute and does not satisfy one or more of the conditions set out in Regulation 3(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 (the 2005 Regulations).

3. At the hearing, Counsel Ms. Lloyd appeared for the appellant, on the instructions of Deighton Pierce Glynn solicitors. The respondent was not represented.

### Immigration History

4. The appellant is a failed asylum seeker. He entered the UK illegally in a lorry on 20 April 2004 and claimed asylum the same day. He was served with notice of illegal entry on 21 April 2004 and his asylum claim was refused on 4 August 2005. On the information before me, it appears that the appellant did not appeal against that decision.

5. On 17 April 2007, the appellant was arrested as part of 'Operation Hilltown' for being in possession of forged documentation. On 22 June 2007, he was convicted at Hull Crown Court on four counts of possession and use of a false

instrument under Section 24 of the Forgery and Counterfeiting Act 1981. On 6 July 2007, he was sentenced to 18 months imprisonment and recommended for deportation. He did not appeal against conviction or sentence.

6. On 25 July 2007, he was advised of his liability for deportation and invited to make representations setting out why he should not be deported on completion of his sentence. On 27 September 2007, a decision was made by the respondent to deport him. On 25 October 2007, the appellant appealed against that decision. His appeal was dismissed on 10 January 2008. On 1 February 2008 the appellant sought reconsideration of that decision from the Asylum and Immigration Tribunal. This was refused on 14 February 2008. On 20 February 2008, he sought judicial review from the Administrative Court. This was refused on 8 April 2008 and the appellant became appeal rights exhausted on that date.

7. On 19 March 2009 the SSHD signed a deportation order. This was served on the appellant on 3 April 2009.

8. On the information before me, no attempt has been made to detain the appellant or to deport him from the UK.

**Asylum Support History**

9. The appellant was provided with Section 95 support from 5 October 2004 to 28 September 2005. There is no evidence before me to suggest that he continued to be in receipt of asylum support from September 2005 to the date of his arrest and detention in 2007. The appellant states that on release from prison in 2008, the United Kingdom Border Agency (UKBA) provided him with accommodation but he cannot recall the precise dates. He does not know whether this was Section 4(1) or 4(2) accommodation. He ceased to reside there because he wished to move to Hull to be close to friends. He said that whilst he was given permission to move to Hull, he was not offered alternative accommodation in that city.

10. According to the respondent's refusal letter of 1 November 2012, the appellant's 2009 application for Section 4 support was approved on 16 July 2009, but he failed to accept the offer. A further application for support was approved on 3 November 2009, and the appellant was warned that his failure to take up the offer of accommodation on this occasion, could affect his future claims. The respondent states that on 24 November 2009, the appellant again failed to take up the accommodation offered to him in the Doncaster area, because he wished to remain in Hull. The appellant says that this was because his girlfriend was pregnant at the time and he wanted to be close to her but she later terminated the pregnancy.

11. The respondent states that some months later in March 2010, the appellant reapplied for Section 4 support but on this occasion, his application was unsuccessful. I do not know whether he appealed against that decision.

12. The appellant next applied for support in November 2011. The application was rejected because the SSHD did not accept that the appellant was destitute. The appellant appealed, but on 29 November 2011 his appeal was dismissed by this tribunal. Two further applications, made on 24 July 2012 and October 2012 were both rejected. The latter application was refused on 1 November 2012 and is the subject of the current appeal.

13. The appeal was heard by an asylum support judge on 6 December 2012. The judge decided that whilst the appellant was destitute, he had failed to discharge the burden upon him to demonstrate that he was taking all reasonable steps to leave the United Kingdom (UK).

14. The appellant applied to the Administrative Court for judicial review, on the grounds that the decision of 6 December 2012 contained a material error of law. On 12 December 2012, His Honour Judge Keyser QC, sitting as a Deputy High Court Judge in the Administrative Court, accepted that the appellant was destitute and granted interim relief in the form of Section 4 accommodation. On 28 January 2013, having received the agreement of the respondent to provide the appellant with support until the final resolution of his appeal, the Administrative Court granted permission by consent in judicial review proceedings and remitted the appeal for re-hearing by this tribunal.

15. This is the re-convened hearing.

**The appellant's evidence**

16. The appellant states that he left Gaza sometime around 1999-2000 accompanied by his father for Lebanon. He was around 12 years of age at the time. His father delivered him into the care of a friend and returned to Gaza, apparently to collect his mother and 8 year-old brother. The appellant has not seen or heard from any of his family since. He has not attempted to write to them or contact them by other means. He can only recall the name of the street where he lived in Gaza City but no more. In addition to his immediate family, he also had a number of maternal uncles and aunts residing in Gaza City. He believes his father is no longer in Palestine but accepts that he cannot be certain of this. He does not have a passport, birth certificate, Identity Card or Identity Card number. He has no memory of ever being issued with these documents. He has made several attempts since 2006 to return voluntarily to Palestine. He believes he has done as much as he can. Most recently, he contacted the Red Cross with a view to tracing his family and relatives in Gaza.

**The Appellant's Assisted Voluntary Return (AVR) history**

17. The evidence concerning the appellant's AVR applications under the Voluntary Assisted Return and Reintegration Programme (VARRP) is extremely confused, primarily because, both the appellant and respondent have given conflicting accounts of events.

18. I have before me four documents originating from the respondent, which provide details of the appellant's AVR applications. The earliest of these is a letter to the appellant's solicitors, dated 28 July 2009. The letter states that the appellant first applied for AVR on 22 December 2006, which was approved by UKBA on 2 January 2007 but withdrawn by the appellant in June 2007. The letter refers to a second application of 2 February 2007, also approved by UKBA, but later withdrawn by the respondent on 20 April 2007. If these details are correct, then the appellant had two concurrent applications for AVR and was allowed to lodge the second application, notwithstanding that the first application had already been approved.

19. The second document is the respondent's refusal letter of 1 November 2012, which provides slightly different information. This states that the appellant has made three applications for AVR. The first of these applications was withdrawn

by the appellant; the second, withdrawn by the respondent and the third application rejected by UKBA. It is further stated that the appellant has been non-compliant in the removal process and it is therefore not accepted that he meets the criteria under regulation 3(2)(a) of the 2005 Regulations. The letter does not provide the dates on which the AVR applications were made or when they were withdrawn.

20. The third document is the respondent's submission to the Tribunal of 29 November 2012. This included a chronology of the appellant's immigration and support history from 20 April 2004 to 1 November 2012. By contrast, this submission records that the appellant made only one AVR application on 22 December 2006, which was approved on 2 January 2007 but withdrawn by the appellant on 15 February 2007. The chronology does not mention a second and third application.

21. The respondent's final submission to the Tribunal of 8 February 2013 again refers to the appellant having made three applications, but the date of the first application is now said to be 26 December 2006, but later withdrawn. There is also reference to a second application made on 1 February 2007 which was deemed withdrawn by UKBA because, the appellant had failed to keep in contact with UKBA and to comply with their requests. The third application of 3 March 2008, noted as rejected by UKBA.

22. The appellant's evidence is equally unclear. In his witness statement of 10 December 2012, he agrees that that his first AVR application was made to the International Organisation for Migration (IOM) in December 2006, but adds that he submitted a second application *"three months later in January 2007."* It is also said that two subsequent AVR applications in July and October 2012, submitted via Refugee Action 'Choices' Team, were also unsuccessful. The appellant states he was told by Refugee Action that they could not assist him in returning to Palestine. There is no mention of a 2008 application.

23. In the same witness statement, the appellant also refers to having made contact in 2007 with the Palestinian General Delegation Office (PGDO) in London, who apparently also told him that they could not help him.

24. At the hearing, the appellant gave oral evidence to the effect that he has made three applications for AVR. He denied that he has withdrawn any application. He claimed that he was contacted by the IOM (who administered the VARRP scheme at the time), and advised that all applications lapse after three months and that he was required to complete a fresh form if he wished to continue. He says he did this sometime in 2007. In April that year, the appellant was arrested, and sentenced to 18 months imprisonment. Following his release from prison in 2008, he submitted his third AVR application. He believes this may have been in 2009. His most recent and fourth AVR application, was made on 30 October 2012.

25. In response to questions put by me, the appellant insisted that he did not withdraw first AVR application and that his second application was made before his arrest in 2007, because his first application had lapsed due to the passage of time.

26. I also have before me correspondence from Refugee Action dated 4 December 2012. Refugee Action currently administers the VARRP scheme but they also appear to have assisted the appellant with his asylum support appeal. In the said letter, Refugee Action confirms that the appellant applied for AVR in 2007 through IOM. They state that in 2007, the appellant contacted the "Palestinian

authorities" only to be told that they cannot help him. They do not explain how they have come by this information. They added that the appellant contacted the Palestinian authorities again on 26 November 2012, this time from the Refugee Action offices, only to be informed that the office in London cannot assist him to obtain travel documents. It is further stated that:

> "[t]hey ...agreed to see him to confirm that he is Palestinian but the client did not need that as he was not disputed about his nationality."

27. The Refugee Action caseworker states that on the same date, he contacted the local Immigration Team in Bristol on behalf of the appellant. The letter of 4 December 2012 continues:

> " [The] Refugee Action representative was told by the Immigration Voluntary Departure Team that UKBA cannot help [the appellant] to obtain a travel document to assist him in any way to return home to Palestine. *They told Refugee Action that currently UKBA has problems in returning [people] to Palestine even if they have the travel documents let alone the ones without*." (My emphasis).

28. Finally, it is stated that in July 2007 the appellant approached Refugee Action in Leeds and in October 2012 in Bristol for assistance with voluntary return. It is said that on both occasions, he was advised they cannot assist him.

**Respondent's Submission**

29. On 4 February 2013, the respondent was directed to provide the tribunal with the following information:

(1) Copy decision letter of the Secretary of State for the Home Department refusing the appellant's asylum claim;
(2) Copy judgment(s) of the FTT tribunal and any subsequent disposal(s) by the Upper Tribunal of the appellant's appeal against the decision in (i) above;
(3) Full details of any and all steps the Secretary of State considers the appellant could reasonably take to leave the UK;
(4) Full details of any and all steps the appellant has failed to take to leave the UK;
(5) Confirmation of whether any, and if so what assistance has been offered by UKBA to the appellant to obtain travel documentation from the Palestinian delegation in the UK;
(6) What, if any AVR routes to Palestine are operational and how many failed asylum-seekers have successfully returned to Palestine via these routes?
(7) Details of the appellant's failure to comply with the removal process as alleged in the refusal letter of 1 November 2012;
(8) Any legal authorities or other evidence upon which the Secretary of State seeks to rely.

30. On 8 February 2013, the respondent replied by providing a copy of her Reasons for Refusal letter dated 5 August 2005; a letter dated 28 July 2009 addressed to the appellant's then solicitors; and by making a number of general observations. The specific information requested by directions (2) – (8), has not been received. The respondent's general observations included that UKBA believe the appellant to be of Egyptian origin and not Palestinian. The basis for this is said to be a note made by an Immigration Officer during the course of a

nationality interview. I have not been provided with the date of that interview, nor do I have the interview notes. The written response continues as follows:

> "It is...the opinion of the UK Border Agency that in the light of the above information [the appellant] is making every attempt to frustrate his removal from the United Kingdom. It is also noted that [the appellant] made his initial application for [AVR] on 26 December 2006 and later...withdrew this application. He then made a further application for AVR on 1 February 2007, which was withdrawn by the UK Border Agency. *It should also be noted that as [the appellant] maintains that he is a national of the Palestinian authorities it would be impossible for the AVR process to be concluded.*" (My emphasis).

**Appellant's Submission**

31. Not surprisingly, Ms. Lloyd takes issue with the respondent's submission that the appellant is an Egyptian national. She reminds me that at no stage during his lengthy immigration history, including tribunal and court proceedings, has the respondent challenged the appellant's claimed national origins. Counsel refers me to the UKBA Country Policy Bulletin on the Occupied Palestinian Territories of June 2010 (OPT June 2010 report) and asks me to note the difficulties faced by Palestinians in securing travel documents and attempting to return to Palestine. Relying upon the expert opinion of Dr. Tobias Kelly, Senior Lecturer in Social Anthropology at the University of Edinburgh, Counsel submits that few Palestinians can remember their identity card numbers and that, in the light of the appellant's age on leaving Palestine, it is not unreasonable that he does not know his ID number. She submits that the appellant has taken all reasonable steps to leave the UK and continues to do so.

**The Legislative Framework**

32. In so far as is relevant, Section 4 of the 1999 Act (as amended by section 49 of the Nationality, Immigration and Asylum Act 2002 and section 10 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004) provides:-

> **Accommodation for persons on temporary admission or release**
>
> (1) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of persons –
>
> (a) temporarily admitted to the United Kingdom under paragraph 21 of Schedule 2 to the 1971 Act;
> (b) released from detention under that paragraph; or
> (c) released on bail from detention under any provision of the immigration Acts.
>
> **Failed asylum-seeker**
>
> (2) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a person if –
>
> (a) he was (but is no longer) an asylum-seeker, and
> (b) his claim for asylum was rejected.

33. Regulation 3 of the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005, provides:

(1) Subject to regulations 4 and 6, the criteria to be used in determining the matters referred to in paragraphs (a) and (b) of section 4(5) of the 1999 Act in respect of a person falling within section 4(2) or (3) of that Act are -

(a) that he appears to the Secretary of State to be destitute, and
(b) that one or more of the conditions set out in paragraph (2) are satisfied in relation to him.

(2) Those conditions are that-

(a) he is taking all reasonable steps to leave the United Kingdom or place himself in a position in which he is able to leave the United Kingdom, which may include complying with attempts to obtain a travel document to facilitate his departure;
(b) he is unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason;
(c) he is unable to leave the United Kingdom because in the opinion of the Secretary of State there is currently no viable route of return available;
(d) he has made an application for judicial review of a decision in relation to his asylum claim-
  (i) in England and Wales, and has been granted permission to proceed pursuant to Part 54 of the Civil Procedure Rules 1998,
  (ii) in Scotland, pursuant to Chapter 58 of the Rules of the Court of Session 1994 or
  (iii) in Northern Ireland, and has been granted leave pursuant to Order 53 of the Rules of Supreme Court (Northern Ireland) 1980; or
(e) the provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998.

34. Section 103 of the 1999 Act provides a right of appeal to the First-Tier Tribunal (Asylum Support). So far as is relevant, this states:

(1) (not relevant);
(2a) If the Secretary of State decides not to provide accommodation for a person under section 4, or not to continue to provide accommodation for a person under section 4, the person may appeal to the First-tier Tribunal.
(3) On an appeal under this section, the First-tier Tribunal may –
  (a) require the Secretary of State to reconsider the matter;
  (b) substitute its decision for the decision appealed against; or
  (c) dismiss the appeal.

**The Voluntary Assisted Return and Reintegration Programme (VARRP)**

35. According to information published by the UKBA, VARRP is the UK's generic voluntary return programme for those in the asylum system and those with temporary status in the UK who wish to return voluntarily and permanently to their country of origin or to a third country to which they are admissible. VARRP is operated by Refugee Action under their 'Choices' service. It is co-financed by the UKBA and the European Refugee Fund (ERF).

36. In order to be eligible for VARRP a person must:-

(a) have an asylum application pending;
(b) have been refused asylum and have an outstanding appeal against that decision;
(c) have been refused asylum and have exhausted the appeals process;
(d) not have withdrawn their asylum application;
(e) fall within any of the above categories and be detained by the immigration service solely in relation to immigration offences, except where the applicant has been assessed by detention services as violent and/or may pose a threat to Refugee Action staff;
(f) have been refused asylum but granted discretionary leave to remain in the UK outside the immigration rules.

37. The programme is not open to persons:

(i) who are British citizens or nationals of Switzerland, or nationals of European Economic Area (EEA) state;
(ii) granted humanitarian protection, indefinite leave to remain and/or refugee status;
(iii) granted permission to enter or remain in the UK for non-asylum reasons, e.g. students, spouses, visitors etc;
(iv) who have previously participated in an AVR programme following their subsequent return to the UK (some exceptions may apply);
(v) who have never sought asylum in the UK;
(vi) who are dependents and are not involved in the asylum application;
(vii) involved in ongoing matters pertaining to the criminal justice system;
(viii) who have received custodial sentences in the UK exceeding a total of 12 months prior to Refugee Action receiving their application;
(ix) convicted of a serious immigration offence;
(x) who are subject to a deportation order;
(xi) for whom arrangements for their return are already in place;
(xii) who are immigration detainees or those who have had removal directions set at any time;
(xiii) whose purpose in leaving is to nullify their adverse immigration status in order to re-enter the UK.

38. UKBA's published guidance states that an applicant can withdraw from VARRP at any time prior to departure. If they fail to travel within three months of their application being approved, without a valid reason, the application will be "deemed withdrawn" by UKBA. Generally, only two AVR applications are considered for each applicant. Those who cancel or withdraw their application or do not depart within three months of approval on two occasions, will no longer be eligible for AVR. A third application, will only be considered on production of evidenced exceptional reasons why departure via assisted voluntary return has not taken place. In each case the final decision about consideration of a third assisted voluntary return application rests with the UK Border Agency.

39. In all cases, applications for AVR are made to, and screened by, Refugee Action. Thereafter they are sent to the Assisted Voluntary Returns Unit (AVRU) of the UKBA for approval. It is the AVRU, and not Refugee Action, who decide whether or not an applicant is suitable for AVR.

**Occupied Palestinian Territories - Country of origin Information (OPT-COI)**

40. OPT June 2010 report, states at paragraph 2.1 that to re-enter the Occupied Palestinian Territories the individual concerned must be in possession of a travel document issued by the Palestinian authorities. In order to obtain a travel document the individual must have an ID card or ID card number. Only residents of the West Bank and Gaza, who were present in the territories at the time of the Government of Israel census, were registered in the Palestinian Population Registry (PPR), recognised as legal residents and provided with identification cards. The responsibility for issuing ID cards and travel documents transferred from the Government of Israel to the Palestinian authorities in 1994. Children under 16 years of age do not carry a separate ID card but are named on their parents' cards. They are however, given their own unique identity number and this is included on the child's birth certificate.

41. The OPT-COI report of 15 May 2012, confirms the above information. Paragraph 28.02 quotes the advice of the PGDO concerning the issuing of travel documents to Palestinians living in the UK namely that:

> *"A Palestinian (who is eligible i.e. from the OPT and with ID number) living in the UK can apply for a Palestinian Passport by Power of Attorney, where the relevant nominee currently resides in the OPT. The person concerned makes an application at the Palestine General Delegates Office (PGDO) in London. Having confirmed that the person is Palestinian and has an ID card number the PGDO issues a Power of Attorney Form, which must be signed by the applicant. Because the individual concerned has to sign the Power of Attorney form, UK Border Agency cannot make an application on their behalf.*
>
> *The Power of Attorney form is then sent by the nominee to the nominated person in the OPT. The person nominated in the Power of Attorney then applies on the applicant's behalf at the relevant office in the OPT. The travel document once issued (we understand this may take only a couple of days) will be sent to the UK to the applicant, or if directed the Palestine General Delegation, London."*

**Discussion**

42. I accept the findings of the previous tribunal judge that the appellant is destitute. The Administrative Court had no issue with the conclusion reached and I see no reason to challenge that finding.

43. I reject the respondent's submission that the appellant is an Egyptian national.

44. The appellant has consistently maintained since 2004 that he is Palestinian. The reasons for refusal letter dated 5 August 2005, records the following at paragraph 18:

"...You were born and indeed are a resident of the Gaza Strip and as such you will be returned there."

45. UKBA have not challenged the appellant's claim to be Palestinian in a tribunal or court with jurisdiction to determine questions of nationality. In fact, all UKBA decisions and correspondence disclosed to me, describe him as Palestinian. The only reference to the appellant being Egyptian appears in an undisclosed undated note made by "an Immigration Officer during a nationality interview".

46. Ms. Lloyd tells me that the appellant's representatives were unaware until the hearing that UKBA doubted his claimed nationality. I accept that submission. I am satisfied that the Secretary of State has not taken issue with the appellant's claimed nationality until the date of this hearing and that the appellant and his representatives have not been put on notice that this was to be raised as an issue in this appeal. If that is now the stance of the UKBA, then justice and fairness demands that the appellant is given an opportunity to adduce evidence in support of his claim.

47. In any event, I take the view that the Secretary of State cannot run an un-pleaded case before the First-tier Tribunal - Asylum Support, especially where this concerns issues of immigration and nationality, as these are outside this tribunal's jurisdiction. Having regard to the reasoning of their Lordships in *Abdullah v SSHD* [2013] EWCA Civ 42, however, it would appear that the appellant has to date been accepted as a Palestinian and I have no satisfactory evidence before me to question that ruling. That leaves open the possibility of the respondent making further enquiries on the question of the appellant's nationality, should she wish to do so.

48. In relation to the appellant's AVR applications, I find as fact that between December 2006 and his arrest on 21 April 2007, the appellant made two applications. UKBA approved the first on 2 January 2007. Thereafter, I find that the appellant withdrew his first application before submitting his second application on 15 February 2007. I note that Ms. Lloyd accepts this in her skeleton argument, albeit that she says the withdrawal took place on a different date. I reject the appellant's evidence that his second application was made at the invitation of IOM because his first application had lapsed. The fact that the appellant failed to follow through with the approved application, electing instead to withdraw from the process and re-apply, suggests to me that he was time-wasting and seeking to frustrate the AVR process. In my judgment, the mere making of repeat applications is not necessarily evidence of a genuine intention to leave the UK voluntarily.

49. I also reject the respondent's evidence concerning the dates on which the appellant made and withdrew his AVR applications. The dates provided by UKBA make no sense at all. I find as fact that the appellant's second application was approved but that by the date of his arrest and detention in April 2007, he had not attempted to leave the UK. Ms. Lloyd says on his behalf, that his arrest and subsequent detention could explain the reasons why he failed to keep in touch with UKBA. The respondent has failed to explain the frequency and nature of the requests with which the appellant failed to comply. Nor do I know to whom or where these were sent. On the evidence before me, I find on a balance of probabilities that IOM (as opposed to UKBA) probably did attempt to contact the appellant at his last known address. It is also likely that IOM did not know of his arrest and may have treated his failure to reply to correspondence as a refusal to co-operate, and advised UKBA accordingly. I therefore accept Ms. Lloyd's submission that the appellant was unable to respond to enquiries because he was serving a prison sentence. In the circumstances, his failure to

comply with requests for information was for an exceptional reason beyond his control.

50. According to UKBA's submission of 8 February 2013, the appellant's AVR application of 3 March 2008 was rejected following his non-compliance in two previous applications. However, their published policy permits them to accept a third application in exceptional circumstances. There is no evidence before me to suggest that UKBA applied their policy in this case and asked themselves whether the appellant's incarceration was the cause of his failure to make contact. Had they done so, it is my view that in all probability they would have concluded that the appellant was prevented from keeping in touch because he was in prison and that this satisfied the exceptional circumstances test. Accordingly, in my judgment, UKBA's decision to refuse to accept the 3 March 2008 application was flawed.

51. I note that on 19 March 2009, the Secretary of State made a Deportation Order against the appellant under Section 5(1) of the Immigration Act 1971. The appellant applied, through solicitors, for revocation of the Deportation Order but the respondent refused his application on 28 July 2009, together with further representations on asylum and human rights grounds. Although the Deportation Order remains effective, no attempt has been made to remove or detain the appellant. In the light of the evidence from Refugee Action, who operate the VARRP scheme on behalf of UKBA, I accept that the reason for this is that, currently UKBA has problems in returning people to Palestine even if they have the travel documents let alone the ones without.

52. One additional consequence of the Deportation Order remaining in force, is that the appellant in excluded from the VARRP programme and has been since 19 March 2009. As such, whilst Refugee Action may allow the appellant to submit an application for AVR, UKBA will not approve it. The practical effect of this disqualification is that the appellant cannot obtain assistance from Refugee Action to leave the UK voluntarily notwithstanding that the respondent is unable or unwilling to enforce his removal.

53. On the issue of documentation, I note that the respondent has never sought to suggest at any stage of the immigration and deportation proceedings that the appellant has the requisite ID documents to leave the UK. I therefore find as fact that the appellant does not possess a travel document and does not have an ID card, birth certificate or unique ID number, at least one of which is required by the PGDO in London before in order to issue a travel document. I note the suggestion in the OPT-COI that UKBA and Refugee Action cannot apply for this on the appellant's behalf. However, in my judgment, there is nothing to prevent the appellant from doing so himself. I take the view that it is reasonable to require him to make every effort to contact the PPR and to provide the respondent with evidence of his attempts together with proof of postage and/or delivery. This would demonstrate that he is taking one of many possible reasonable steps to obtain this required information. I consider this an essential requirement if he wishes to continue to satisfy regulation 3(2)(a).

54. I note with some concern, that since the appellant arrived in the UK in 2004, he has not attempted to contact his family or the authorities in Palestine to advance his AVR process. I have some sympathy with the respondent's view that the appellant has failed to co-operate fully with the AVR process. I accept, however, that the appellant has made some efforts in the past and has now made contact with the British Red Cross to request assistance with tracing his relatives in Gaza, who may be able to assist him in applying for his birth certificate/ID number. I have seen correspondence from the Red Cross dated

11 February 2013 confirming that the appellant had a tracing appointment with them on Monday 18 February 2013 at 2pm. I accept that this is a reasonable step in the right direction. I take the view that when deciding whether the appellant is continuing to take all reasonable steps to leave the UK or place himself in a position in which he is able to leave, the respondent is entitled to request full details of how the tracing exercise is progressing.

55. As I have said above, the appellant is currently unable to seek help from Refugee Action with AVR because his Deportation Order excludes him from the VARRP process. Clearly, however, there is a great deal the appellant could do to document himself in preparation for departure, and it is right that the respondent should monitor the steps he is taking periodically.

56. However, in the light of my above findings that exceptional reasons caused the appellant to lose contact with IOM/UKBA in 2007, I consider that there is nothing to prevent the respondent from exercising her discretion to accept a third AVR application from him. This would enable Refugee Action to assist the appellant with re-documentation and would ultimately speed up the process of voluntary departure. It is not acceptable, in my judgment, for the respondent to decide that enforced removal is not currently possible, for whatever reason, but to continue to deny the appellant help through Refugee Action with returning to Palestine voluntarily. That would leave the appellant in the unfortunate situation envisaged by Lady Hale in *Limbuela, R (on the application of) v. Secretary of State for the Home Department* [2005] UKHL 66 (3 November 2005) [paragraph 78 refers] of having to endure the prospect of a life of degradation for however long it takes for the Palestinian situation to improve.

## Conclusion

57. There are four additional questions that I need to address in this appeal, namely:

***Under what circumstances, if any, is it reasonable for a person of Palestinian origin to take no steps at all to leave the UK?***

58. Under the 2005 Regulations, where the Secretary of State holds the opinion that there is no viable route of return available to a failed asylum seeker, they are not required to demonstrate that they are taking all reasonable steps to leave the UK. That is not, however, the opinion the Secretary of State currently holds in respect of Palestine. She considers there is a viable route of return. She would only take a different view if the Upper Tribunal - Asylum and Immigration Chamber (UTIAC), or the superior Courts, determined that Palestinians could not return owing to a risk on return.

59. However, that is not the current view taken by the UTIAC. In *HS (Palestinian – return to Gaza) Palestinian Territories CG* [2001] UKUT 124 (IAC) it was held that Palestinians from Gaza with valid or expired passports, were unlikely to experience problems returning to Gaza via the Rafah Crossing in Egypt. The UTIAC found that Palestinian passports are renewable and new passports available via a straightforward procedure using a nominee in Palestine. All that is required is an ID number. They accepted that the returnee may experience delays whilst waiting for the Rafah crossing to open but that overall, the Egyptian authorities were accommodating and willing to grant visas and visa extensions to those waiting to re-enter Gaza. In reaching these findings, the UTIAC took into account the evidence of the PGDO in London.

60. In the light of the conclusions reached by the UTIAC, I am satisfied that any obstacles that exist for Palestinians wishing to return to their country are difficult but by no means insurmountable and anyone with access to their ID and travel documents should be able to return voluntarily. It is not therefore reasonable for a person of Palestinian origin to take no steps at all to leave the UK.

***What steps can a person of Palestinian origin reasonably take to leave the UK or place himself in a position in which he is able to leave the UK?***

61. For those individuals who have passports/other travel documents, including expired documents, it is reasonable to expect that they will apply to the PGDO for extensions where necessary, and that they will take steps to apply for visas to enter Egypt. Returnees without travel documents should make every effort to obtain one, a process that may be long but not impossible. In particular, I see no reason why persons born in the OPT should not be able to obtain their birth certificate or ID card/number directly from the PPR or with the assistance of relatives and friends in Palestine in order to apply for a travel document.

***What help is available to Palestinians under VARRP?***

62. In my judgment, it is reasonable to require a person seeking to satisfy the test in regulation 3(2)(a), to show that they are attempting to contact the PPR, directly or with the help of family of friends, to obtain documentary evidence of their Palestinian nationality. Equally, UKBA should play a more proactive role in assisting those wishing to return to Palestine. This assistance could take the form of arranging interviews for returnees at the PGDO or corresponding with the PPR on their behalf.

63. VARRP is not available to persons listed in paragraph 37 above, no matter how willing they may be to return voluntarily to Palestine. In order to satisfy the requirements of regulation 3(2)(a), these persons must demonstrate the steps they are taking to facilitate their departure from the UK. Whilst these persons are not eligible for assistance from Refugee Action under VARRP, I see no reason why the UKBA should not be able to offer them help.

***Has the appellant taken all reasonable steps to leave the UK or to place himself in a position in which he is able to leave?***

64. In my opinion, the Secretary of State was wrong to treat the AVR application of February 2007 as withdrawn because the appellant had a valid reason for failing to respond to UKBA enquiries. That decision has had a damaging impact on each subsequent AVR application made by the appellant post – 2007. In my judgment, evidence of exceptional circumstances was available to UKBA showing why the appellant had failed to leave the UK. In the circumstances, I find that his application of 3 March 2008 should not have been rejected.

65. I note that the appellant has been in touch with the PGDO and requested assistance in obtaining a travel document. At present, they are unable to assist. They have in the past offered to meet him to establish that he is indeed Palestinian, but he has declined to do so. As his nationality has not been in issue in the past, I do not find that his refusal to meet with the PGDO was unreasonable. If this remains a live issue, however, I take the view that the appellant must comply with any UKBA request to submit to tests to confirm his nationality.

66. In addition, I have noted the efforts made in the past by the Refugee Action caseworker to assist the appellant with AVR. On the totality of the evidence before me, I accept that cumulatively, the appellant has taken all reasonable steps (thus far), to leave the UK. In my judgment, the onus is on him to continue doing so until his actual departure. These steps include corresponding with the PPR. I would expect that when the time comes for him to demonstrate that he has done so, he will be able to produce evidence of this including copy correspondence. In addition, his recent approach to the Red Cross for assistance in locating his family in the Gaza is another useful line of enquiry.

67. Finally, on the evidence before me, I am satisfied that the Secretary of State has taken no steps to enforce the Deportation Order and remove the appellant to Palestine. She has however, refused to revoke the Deportation Order, thereby preventing Refugee Action from giving any assistance to the appellant to return voluntarily. This creates additional difficulties for persons genuinely wishing to leave the UK. In my judgment, the Secretary of State needs to do more to assist such persons.

68. The failure of the Secretary of State to remove the appellant since 2009, suggests that there is little prospect at present of him being removed in the immediate future. I have seen no evidence from the respondent of either enforced removal to Palestine or successful voluntary departures via AVR or independently. In the light of the apparent difficulties that exist, I am satisfied that the appellant has discharged the burden upon him to demonstrate on a balance of probabilities that he is taking all reasonable steps to place himself in a position where he will be able to leave the UK. That is an on going responsibility and the appellant is reminded that failure on his part to continue taking the steps required may result in the Secretary of State discontinuing his support.

69. Accordingly, I allow the appeal. The appellant is entitled to the provision of Section 4 support.

Signed Sehba Haroon Storey
Principal Judge, Asylum Support

Dated 2013

***SIGNED ON THE ORIGINAL*** [Appellant's Copy]