STATELESSNESS
Case Law Database

Sweden - Migration Court of Appeal, 29 January 2018

The case concerns the application of Article 12 of the Qualification Directive (recast Directive 2011/95) on the possibility for those whose support from United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) has ceased to obtain international protection. The main issue was the determination of which country had been the applicant’s habitual place of residence to examine the reasons for protection. In the applicant’s case, while he had lived in Syria for a significant length of time, his ties to Algeria were strong enough to permit the Court to find the latter to be his habitual place of residence and consequently the applicant’s appeal was dismissed as Algeria was found to be safe.

Case number: UM8384-16
Citation: Migration Court of Appeal, 29 of January 2018, UM8384-16
Date of decision: 28/01/2018
State: Sweden
Court / UN Treaty Body: Migration Court of Appeal
Language(s) the decision is available in: Swedish
Applicant's country of residence: Algeria
Legal instruments: European Union law, Other international law
Key aspects: Country of return, Exclusion grounds, Refugee status determination , Statelessness and asylum
Relevant Legislative Provisions:

Convention Relating to the Status of Refugees 1951

Aliens Act (2005: 716)

Basic Protection Directive (Directive 2011/95/EU of European Parliament and of the Council of 13 December 2011 laying down standards for the eligibility of third-country nationals or stateless persons for international protection)

Facts

In August 2014, the applicant applied for asylum in Sweden. As a basis for the application, he argued that he was in need of protection in relation to both Syria and Algeria. He stated that he was a stateless Palestinian and was born and raised in a refugee camp in Syria. He is registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). In early 2012, he travelled to Algeria with a permit equivalent to a visitor's visa. During his flight to Sweden, he has also spent three to four months in Libya and passed through Italy, Austria, Germany and Denmark. His initial asylum application was rejected on the basis that, even though he may be stateless, data showed that Algeria was not unsafe for Palestinians. He appealed the decision on the basis that only Palestinians who had lived in Algeria for a significant length of time could be considered safe and that he could not return. The Administrative Court in Malmö dismissed his appeal as it found that the applicant was a habitual resident of Algeria, which was regarded as safe for Palestinians. The decision was based on the applicant’s ties with the country, i.e., his wife and son were both entitled to Algerian nationality.

Legal arguments by the applicant

The applicant appealed the decision of the Administrative Court in Malmö on the basis of his long residence in Syria. He argued that the decision of the Administrative Court should be overturned and the case should be referred back to the immigration authorities. Next, he argued that he should be given a residency and work permit due to his need for protection caused by the risk he faced in his country of habitual residency. Alternatively, he stated that a residence permit should be issued due to the especially grave circumstances in the country of habitual residence. He argued that Syria should be considered his former habitual residence and that his wife and son were in Syria being supported by family and had applied for support from UNRWA, as they had been forced to leave Algeria. He argued that he had to leave Syria and his support from UNRWA was withdrawn because of the general situation in the country. He should therefore be regarded as a refugee under the 1951 Convention.

Legal arguments by the opposing party

The Swedish Migration Agency argued that the applicant's ties in Algeria meant that it should be regarded as his main place of residence. It added that regardless of whether his wife and son have moved to Syria, they have an unconditional right to

reside in Algeria through their nationality and can therefore settle there at any time.

Decision & Reasoning

The Court first considered whether the applicant should obtain international protection. It found that the applicant, as someone in receipt of support from a UN body, such as UNRWA, was not entitled to refugee status under Article 1D of the 1951 Convention.

The Court then considered Article 12(1)(a) of the Qualification Directive relating to the criteria for the awarding of subsidiary protection. The article excludes those in receipt of support from UN agencies such as UNRWA, and states that in the case where support from such agencies ceases, the persons shall ipso facto be entitled to the benefits of the Directive.

Referring to the case law of the European Court of Justice (Bolbol, Case C-31/09), the Court noted inter alia that only effective receipt of assistance from a UN body will cause the exclusion of an individual from subsidiary protection, but registration with agencies such as UNRWA can constitute sufficient evidence of receipt of effective assistance. However, if a person voluntarily leaves the area in which the UN agency operates, the exception of cessation of support will not apply. In case of cessation of support, an individual will not need to prove risk of persecution in order to enjoy the benefits of the Directive.

Referring to its own previous case law (MIG 2013: 19s), the Migration Court of Appeal found that depending on the length in time between the cessation of support and the application for asylum, the individual will either obtain refugee status or fall within the ambit of the Directive or the equivalent national legislation, i.e. the Aliens Act 2005.

In the present case, the investigation showed that the applicant was a stateless Palestinian from Syria and that he was registered with UNRWA. Until he left Syria in 2012 - and thus UNRWA's area of activity - he had made concrete use of assistance from this body. After that he resided in inter alia Algeria for about a year and a half. He did not claimed that he applied for protection during his stay there. In contrast to the situation in the European Court of Justice's ruling El Kott et al. and in MIG 2013: 19, the applicant has thus not concretely used the protection and assistance from UNRWA just before he submitted his asylum application in Sweden. According to the Migration Court of Appeal, this means that he is not covered by the exemption from

the Refugee Convention which follows from Article 1D of the Convention and Article 12 (1) (a) of the Qualification Directive. It will then not be relevant to test whether the conditions under the second stage are met, i.e., whether he will automatically enjoy the benefits of the Directive. An examination of the applicant's need for protection must therefore take place in accordance with the rules in the Aliens Act.

Next, the Court turned to examine the question of the country in which the reasons for protection shall be examined. Firstly, the Court noted that according to the Aliens Act 2005, in the case of stateless persons this should be the country of habitual residence, which was however left undefined in the legislation. According to the UNHCR Handbook on the Procedure and Criteria for Determining the Legal Status of Refugees this does not correspond to the last place of residence.

The Court then outlined a list of relevant factors for the determination of habitual country of residence including: length of stay, intention to stay, nature of stay including presence of work, social network, family, legality of stay and ability to return. In relation to the present case, the Court excluded consideration for the various countries the applicant had transited through, given the brief and transitory nature of his stay. The Court then focused its assessment on, inter alia, the applicant’s stay in Algeria, as the last known place of residence of the applicant. The Court noted the formal bond the applicant has with the country given that his marriage is registered there and his wife and son were entitled to Algerian nationality. The Court also pointed to the legality of the applicant's stay. In fact, he was granted residence permits valid for three months that the applicant could continuously renews. The Algerian authorities never gave any reason for the applicant to believe that his permits would not be renewed. He also has relations and a social network within the country. The information available to the Court on Algeria indicated that Palestinians were treated well in the country and had access to healthcare and education. The applicant’s own son had attended school in Algeria. Therefore, the Court found Algeria to be the applicant’s habitual place of residence. Consequently, the Court concluded that the applicant was not presently at risk in Algeria and the he had he failed to show that he was in need of international protection.

Decision documents

Migration Court of Appeal, 29 of January 2018, UM8384-16

Outcome

The appeal was dismissed.

Caselaw cited

European Court of Justice judgment of 17 June 2010, Bolbol, Case C-31/09

European Court of Justice judgment of of 19 December 2012, El Kott and Others, C-364/11

MIG 2012: 20

MIG 2013: 21

MIG 2015: 22

SG (Stateless Nepalese: Refugee Removal Directions) Bhutan [2005] UKIAT 00025

Maarouf v. Canada (Minister of Employment and Immigration), [1994] 1 FC 723

Thabet v. Canada (Minister of Citizenship and Immigration), [1998] 4 FC 21

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