

**THE HIGH COURT  
JUDICIAL REVIEW**

**2006 833 JR**

**BETWEEN**

**S.H.M.**

**APPLICANT**

**AND**

**THE REFUGEE APPEALS TRIBUNAL AND**

**THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM**

**RESPONDENTS**

**JUDGMENT OF MS. JUSTICE CLARK, delivered on the 12th day of March, 2009.**

1. This is the substantive hearing of an application for judicial review of the decision of the Refugee Appeals Tribunal (RAT) dated the 20th May, 2006, to affirm the earlier recommendation of the Office of the Refugee Applications Commissioner (ORAC) that she should not be granted a declaration of refugee status. Ms. Nuala Egan B.L. appeared for the applicant and Ms. Siobhán Stack B.L. appeared for the respondents. The hearing took place at Kings Inns, Court No. 1, on the 10th and 11th February, 2009.

2. Leave was granted by Birmingham J. on the 3rd July, 2008 to apply for judicial review on four grounds, which may be summarised as follows:-

- (a) Failure to consider the submissions by and on behalf of the Applicant to the effect that the refusal of the Libyan state to admit her to the Libyan state constituted a form of persecution. The first named respondent failed to consider the significance of that refusal;
- (b) Failure to consider the submissions made on behalf of the applicant and failure to consider much vital evidence submitted on her behalf;
- (c) Failure to consider the applicant's account of the extent to which she lived her life in fear and the extent of her general activities and life were curtailed in an attempt to avoid attack; and
- (d) Failure to have regard to the applicant's fear of persecution and in relying solely upon and having sole regard to the presence or absence of persecution itself. In so doing the first named respondent failed to have regard to relevant considerations.

**Factual Background**

3. The applicant in this case is of Palestinian ethnicity and is a Muslim. Her first language is Arabic though she also speaks English. She is 27 years of age and she lived all of her life in Libya prior to arriving in Ireland in 2000. Libya is therefore the country of her "formal habitual residence" for the purposes of the Refugee Act 1996.

4. The applicant's parents left Gaza as refugees in 1967. They have never been granted refugee status in any country. After spending some time in Egypt, they moved to Libya for economic opportunity. Until 1993 they enjoyed a relatively stable life and had seven children. The applicant was born in Libya in 1981; she has two older brothers, three older sisters and one younger sister. After the Oslo Accords of 1993, Colonel Gaddafi declared that all Palestinians living in Libya should leave the country and many were forced to leave or remain in camps on the Egyptian border. The applicant's father, who was a maths teacher of some 25 years' standing, was dismissed from his position as was her brother-in-law. For a period of one and half years the applicant and her siblings were prohibited from going to school. The family was forced to relocate internally, staying first with a family friend and then moving to Tubrok. The applicant's father became depressed and in March, 1997, he died suddenly from an illness that the applicant thinks was related to his depression.

5. Roughly one and a half years after the applicant's father died her mother decided that the family should again internally relocate, this time moving to Misrath. There, the family suffered further harassment because they were Palestinians. The applicant's sister spent one year in third level education but was subjected to racially motivated attacks on a daily basis and their mother decided that she should not continue in education. As a result of her sister's experiences the applicant did not attend third level education even though she was a promising student. The fear of physical attacks and rapes against Palestinians prompted the applicant and her sisters to remain indoors as much as possible. When they did go out, they hid in the car in which their brother would transport them from door to door.

**Arrival in Ireland**

6. The applicant's oldest brother came to Ireland in 1994; he completed a Masters degree and obtained a position in the IT field and now has residency in Ireland. On the 1st September, 2000, the applicant and her sister Ebtesam obtained exit visas from Libya and came to Ireland as students in computer studies. It took several attempts before they were granted those visas to study in Ireland. As they had no passports they travelled using legal Egyptian travel documents which had been commonly granted to Palestinian refugees. Ebtesam applied for asylum in August, 2005. She was granted refugee

status and now lives in Dublin. A second sister Elham married an Irishman and has residency in the State.

7. During the continuance of her studies the applicant renewed her student visa annually until she obtained a National Diploma in Computing and Software Development in Tipperary Institute in July, 2005. She says she has applied each summer for a visa authorising her to travel to Libya to visit her mother, who remains in Misrath. If granted such a visa her intention was to stay in Libya for a short period and then to return to Ireland but she was never granted the opportunity as on each occasion her application was refused.

8. Her student visa expired on the 30th September, 2005. On the 26th September, 2005, she married A.A., a Palestinian who has refugee status in Ireland having been previously married under Islamic custom in April, 2005. The applicant then applied for family reunification on the basis of her marriage to a refugee. However in December, 2005 she began to experience difficulties in her marriage and applied for asylum in her own right. She has no current right to return to Libya or to Palestine. She asserts that she is stateless and has few options.

### **The ORAC Stage**

9. The applicant applied for asylum on the 5th December, 2006. In support of her application she submitted her student visa, her birth certificate, her marriage certificate and her Egyptian travel documents. It is noted on her ASY-1 form that the following information was provided at the applicant's s. 8 interview:-

*"Applicant states she is seeking asylum as she states she has no passport only an Egyptian travel document and she states she cannot return to Palestine / Libya or Egypt. Applicant states she got married in this country on the 26/09/2006. Applicant states she did not seek asylum in any other country and she states she came to Ireland on a student visa and her GNIB card expired on the 30/09/2005."*

### **The Questionnaire**

10. In her ORAC questionnaire, which she completed on the 12th December, 2005, the applicant claimed to have a fear of persecution on the basis of her nationality. As to why she left her country of origin she stated:-

*"I'm a Palestinian born and lived in Libya (most of my life) for 19 years. I came to Ireland to study with my sister (Ebtesam A.M.). Now I've finished my study and I can't go back to Libya. My residency in Ireland is finished and I can't obtain a visa to my country of origin (Palestine) or any other country. I have Egyptian travel document (not a passport) which also doesn't entitle me to go to reside in Egypt. The Libyan government refused to issue me a visa to go back to Libya. I can't go back to Palestine, according to the Israeli law and Oslo agreement, I'm not entitled to go back to Palestine. After I got married, I feel that I lost my freedom of independence. Because of all the above, I decided to seek asylum in Ireland."*

11. When asked what she feared might happen to her if she returned to her country of origin, she stated:-

*"I'm a Palestinian born in Libya, can't go back to Libya, can't go back to my country (Palestine) because according to the Israeli law and Oslo agreement, I'm not entitled to go back to Palestine. As a Palestinian born and lived in Libya on a temporary visa, once I left for study and therefore I'm unable to go back."*

12. With her questionnaire she submitted a certificate from the General Delegation of Palestine in Dublin dated 9th November, 2005, which states that she cannot be issued with a Palestinian Travel Document and cannot return to Palestine.

### **The s. 11 Interview**

13. On the 12th January, 2006, the applicant attended for her s. 11 interview at which an Arabic interpreter was present. She indicated to the interviewer that she intended to withdraw her application for family reunification, saying she did not want to be dependent on her husband. When asked why she was seeking asylum, the applicant stated that she has no passport or papers in Libya. She then gave details of her life in Libya, describing well documented incidents of widespread discrimination against Palestinians during the post Oslo accord period and which have been described earlier in this judgment. She gave information about the family's two relocations to escape personal harassment by neighbours who treated them badly because they were Palestinians

14. After her father died, the family bought a car with financial help from her oldest brother in Ireland. The car had a number plate that identified them as Palestinians and was vandalised. They moved twice to escape victimisation and eventually because of fear of sexual attack the applicant and her sister came to Ireland to study as it was unsafe for them in Libya. She said her mother, youngest sister, brother and sister-in-law still live in Misrath in the same house and "they still face the same problem every day." When asked if she would like to return to Libya, the applicant replied that she would, at least to see her family "because I miss them." When asked if she would have any fear of returning, she replied "I would be afraid I would be asked by the government why I left, who I had contact with etc. I would be questioned." At the end of the interview she volunteered the following:-

*"My sister has been granted refugee status and now she cannot travel to Libya. If I am granted, I don't want that to happen because I want to be able to visit my mother and sister. My mother is not allowed out of Libya and if I am not allowed to go there, then we can never see each other."*

15. When asked if she had anything to add she said:-

*"I have finished my study. I can't work, I can't renew my visa, I can't go to Libya, I can't go to Palestine, I can't go to Egypt, I want to be independent of my husband. I would love to go back to my family but I can't."*

16. She was then asked if she would return to Libya if she was allowed by the authorities in Libya, and she replied "Yes." She was asked if that would be her preference and replied:-

*"Yes or to go to Palestine or Egypt or if I become a refugee here, to be able to work, send money back to my family and bring my mother here because then I can take care of her."*

### **The s. 13 Report**

17. On the 1st February, 2006, a s. 13(1) report was compiled in which it was recommended that the applicant should not be declared a refugee. The report accepts the applicant's nationality issues and accepted the lack of rights to citizenship in Libya, Palestine or Egypt and accepted the history of the history of discrimination of Palestinians in Libya in the mid 1990s. The report noted however that while it is difficult to obtain up-to-date information about the current situation for the Palestinian community in Libya, a Norwegian / Danish fact-finding mission report of June, 2004, indicated that between 20-25,000 Palestinians are engaged in jobs that require higher qualifications in both private and public sectors. Those Palestinians are primarily registered as refugees in Lebanon, Syria, Egypt and Jordan and have migrated to Libya to find work. The report noted that this information was consistent with the applicant's account of her father's work as a maths teacher in Libya.

18. The ORAC found the applicant to be forthright, honest and completely credible but nevertheless found that the applicant was not a refugee as she expressed the desire to return to Libya to see her family and also that she did not want to be prohibited from returning to Libya. The officer stated:-

*"It must be concluded therefore that the applicant does not have a well founded fear of persecution in Libya as she is willing to return there if she is allowed by the authorities. [...] she stated that she would be afraid of returning because she would be questioned by the authorities which would indeed be the case. [Appendix 5 – U.S. State Dept Country Report on Human Rights Practices 2004] However, in the applicant's case, it is clear from her statements that her fear of the authorities is countermanded by her desire to see her family."*

19. The officer concluded that the applicant's account was "completely credible" but "by her own admission she does not have a well founded fear of returning to Libya" and was therefore not a refugee within the meaning of s. 2 of the Refugee Act 1996.

20. Appended to the s. 13 report were the following five country of origin information (COI) reports relied upon in the recommendation: (1) a Shaml Newsletter of December, 1995; (2) extracts from a report by the Norwegian / Danish fact-finding mission of June, 2004; (3) a report on Citizenship Laws of the World by the U.S. Office of Personnel Management of March, 2001; (4) a response to information request (RIR) compiled by the Canadian Immigration and Refugee Board in September, 2002; and (5) an extract from a U.S. Department of State Country Report on Human Rights Practices of 2004.

### **The RAT Stage**

21. The applicant's legal representatives (the Refugee Legal Service - RLS) submitted a Form 1 Notice of Appeal on her behalf on the 10th March, 2006. No documentation was appended to that document. Comprehensive, well-drafted grounds of appeal were set out in the Form 1. At ground 1 it was noted that "the appellant instructs that Palestinians in Libya are abused and discriminated against on a daily basis." The applicant's experiences in Libya, including the summary dismissal of her father from his job of 25 years and her own inability to continue in education for a period of one and half years were outlined. At ground 3 it was submitted inter alia that the applicant's past experiences of discrimination fall within the accepted definition of persecution. As evidence of this discrimination / persecution the facts asserted at the s. 11 interview were repeated and at ground 5 it was expressly submitted as follows:-

*"The Authorised Officer failed to adequately assess whether the systematic abuse and discrimination experienced by the appellant was such as to constitute persecution as envisaged by paragraph 54 of the UNHCR Handbook [...]. It is submitted that the discrimination experienced by the appellant amounted to persecution in accordance with paragraph 54."*

22. At ground 10 it was submitted that "the Appellant did not at any stage of the asylum process admit or intimate that she does not have a well-founded fear of returning to Libya" and it was clarified that her desire to return to Libya was solely based on her desire to see her mother who is ill.

### **The Appeal Hearing**

23. An oral appeal hearing took place at which the applicant was legally represented by counsel. No attendance note of the hearing is available and so the Court is reliant on the information contained in the RAT decision as an indication of what occurred at the hearing. The decision indicates that the applicant reiterated the account of events that she gave at her s. 11 interview relating to her father's dismissal, the harassment of her family, the frequent harassment of her sister at her third level college, her father's sudden death in 1997, the family's internal relocation from Tubrok to Misrath, her departure with her sister in 2000 and their subsequent studies in Ireland. It is recorded in the RAT decision that:-

*"She fears that if returned to Libya the applicant is uncertain about her future. She said that she would have problems because of her Palestinian ethnicity and that Libyans would show her no respect on that account."*

24. It is also recorded that under cross-examination "the applicant told the Tribunal that conditions had worsened for Palestinians since she had left Libya", but that she stressed that she deeply wanted to return to see her mother but was not permitted to return by the Libyan authorities. The decision shows that the applicant's counsel referred to paragraph 54 of the UNHCR Handbook and submitted that the applicant had suffered from a combination of adverse factors such as a general atmosphere of insecurity in Libya and that these elements amounted to a well-founded fear of persecution on "cumulative grounds."

25. A negative RAT decision issued in respect of the applicant on the 20th May, 2006. It is that decision that is the subject of the present application.

### **The Impugned Decision**

26. In a relatively short decision where the applicant was found to be entirely credible the Tribunal Member determined that the applicant is not a refugee as she has not established a well-founded fear of persecution under s. 2 of the Refugee Act 1996.

27. The well-foundedness of the claim is explored within the meaning of the term "persecution" and various attempts at definition are examined although the possibility that discrimination could amount to persecution is not explored. The definitions in the well known and respected publications of Goodwin-Gill and Hathaway are quoted and the decision acknowledges that, as a Palestinian, the applicant is not entitled to citizenship in any of the middle-Eastern countries to which her people fled after the wars in 1948 and 1967. The Tribunal Member noted that the applicant's older sister has been granted refugee status in Ireland and stated as follows:-

*"The gist of the claim made by the applicant's sister is that she had suffered persistent harassment during the course of her studies in Libya. It cannot be said that [the applicant] suffered in the same way or that she would have a fear that is well-founded were she to return to Libya. The evidence does not suggest that she was targeted for any particular reason while she lived in Libya. She did experience a difficult time because of the mercurial policy shifts for which Gadaffi is known. Nothing happened during her time in Libya or since her arrival in this country, that would suggest that the applicant would be subjected to serious harm, were she to return."*

28. The Tribunal Member remarked that the applicant had done well for herself as a student in Ireland, that her brother and sister are working in Ireland and that she could seek family reunification. He concluded that she is "an extremely decent truthful lady" and that he had sympathy for her but that she had not demonstrated that she had a well-founded fear of persecution if returned to Libya "for the reasons given during the course of her appeal".

### **THE APPLICANT'S SUBMISSIONS**

29. Ms. Egan B.L., counsel for the applicant does not challenge the decision as irrational or unreasonable on the facts on which it was based but challenges the process by which the Tribunal Member arrived at that decision which she says is flawed by reason of the Tribunal Member's failure:-

- (a) To record some of the evidence given by the applicant in respect of her experiences in Libya; and
- (b) To consider whether the discrimination suffered by the applicant could amount to persecution.

30. Counsel for the applicant submitted that the applicant's complaints have always been that because she was a Palestinian in Libya that she was discriminated against and that this discrimination could amount to persecution in accordance with the guidelines set out in paragraphs 54 and 55 of the UNHCR Handbook. Para. 54 states that discrimination may amount to persecution :-

*"[...] if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practise his religion, or his access to normally available educational facilities."*

31. Counsel argued that the applicant and her family suffered serious restrictions on the right to earn a livelihood and to access education and that their experiences therefore fell within para. 54. She also noted that para. 55 of the UNHCR Handbook states that discriminatory measures which are not, of themselves, of a serious character may nevertheless give rise to a fear of persecution if they produce in the applicant's mind "a feeling of apprehension and insecurity as regards his future existence". In that regard she drew the Court's attention to the fact that the applicant is not permitted to return to Libya and is apprehensive about her situation and her future as a result.

32. Counsel also noted that para. 55 of the UNHCR Handbook further states:-

*"A claim to fear of persecution will of course be stronger where a person has been the victim of a number of discriminatory measures of this type and where there is thus a cumulative element involved."*

33. She argued that this is relevant to the applicant's case as she has been the victim of a number of discriminatory measures which, in her submission, are capable of amounting to persecution within the meaning of s. 2 of the Refugee Act 1996.

- (a) Failure to record evidence

34. Counsel argued that while the principle, as set out by Feeney J. in *Banzuzi v. The Refugee Appeals Tribunal* [2007] I.E.H.C. 2, that there is no obligation upon a decision-maker to recite each and every piece of evidence was accepted and while it is not sought to impose an undue burden on the decision-maker in terms of the detail of the decision, there is an obligation to summarise all material evidence that goes toward a finding of persecution. The Tribunal Member did not comply with that obligation in the present case insofar as he failed to record certain aspects of the applicant's evidence that are indicative of cumulative discriminatory measures.

35. The initial section of the Tribunal Member's decision refers to the Applicant's evidence that Palestinians have no right to Libyan citizenship and they are denied work permits, which inhibits their employment prospects. He referred to her evidence of the change in attitude towards Palestinians after 1993, the fact that the applicant's father was summarily dismissed, that the family then experienced increasing harassment, that the applicant's sister was harassed quite frequently at her third level college, and that the applicant was resented for being a good student. Counsel complained that the Tribunal Member did not recite that the applicant and her sister were in fear of being attacked or raped because of their ethnic background and that they remained indoors because of this fear. She also complained that he did not refer to the prohibition of education for all Palestinians which lasted for roughly one and a half years.

36. She contended that the applicant's evidence in that regard was material to the assessment of whether or not she has a fear of persecution and as such should have been summarised by the Tribunal Member in full. She pointed out that s. 16(16) of the Refugee Act 1996, as amended, obliges the Tribunal Member to have regard inter alia to the Notice of Appeal, the s. 13 report, evidence adduced at the appeal hearing and any documents, representations in writing or other information furnished to ORAC under s. 11 of the Act of 1996 where all this evidence was rehearsed in full..

(b) Failure to consider evidence

37. Counsel for the applicant complained that in the two final sections of his decision entitled "Analysis of the Applicant's Claim" and "The Decision", the Tribunal Member failed to engage with and consider the discrimination suffered by the applicant in Libya and to analyse whether that discrimination might amount to persecution for the purposes of s. 2 of the Refugee Act 1996. She submitted that it was incumbent upon the Tribunal Member to consider the various forms of discrimination suffered by the applicant and her family and the fact that the Libyan authorities had refused to allow her to re-enter that country and to assess whether such discriminatory measures may amount to persecution. She argued that it was open to the Tribunal Member to conclude that those discriminatory measures are not sufficiently serious to amount to persecution or that they do not cumulatively amount to persecution. Her complaint is not that he reached such a conclusion; rather, it is that he failed to enter into that assessment.

**THE RESPONDENTS' SUBMISSIONS**

38. Ms. Stack B.L., counsel for the respondents, argued that the applicant did not demonstrate a subjective fear of persecution and therefore failed to discharge the onus of proof placed on her by s. 11(3) of the Refugee Act 1996 to establish that she was a refugee. She argued that the evidence of her past experiences in Libya was not so material to her claim that it required to be recorded in the decision. The Court was reminded that at her s. 11 interview, the applicant outlined the legal limbo in which she found herself rather than seeking to establish a subjective fear of persecution. When asked why she came to Ireland, the applicant said she came on a student visa and focused on her inability to return as opposed to any fear of persecution and further indicated that she would return to Libya if she was allowed to do so and that she did not wish to be prevented from returning to Libya.

39. It was also noted that no country of origin information (COI) was submitted with the applicant's Notice of Appeal and particularly, no objective evidence that Palestinians are currently discriminated against and / or subjected to persecution in Libya was furnished. Counsel argued that the applicant was aware that COI which was appended to the s.13 report would be before the Tribunal Member and she must have been aware that this COI indicates that although there was a period of discrimination against Palestinians in Libya during the 1990s in terms of a denial of education and an inability to obtain work visas, the appended Norwegian FFM report of June, 2004 indicates that the same levels of discrimination are not experienced today. The report on Libya when dealing with migrant workers generally states that:-

*"In addition to service jobs and unskilled work, many Arab migrants also work in jobs that require higher qualifications, in both the private and public sectors. The Palestinians in Libya mainly belong to this group."*

40. Counsel for the respondents further noted that the prohibition of education for all Palestinians lasted only for a period of one and a half years and was lifted in and around 1998. She argued that it was open to the Tribunal Member, on the basis of the evidence that was before him, to find that there is no risk of persecution in the future and she questions how, in these circumstances, the Tribunal Member can be faulted for failing to set out a summary of the discrimination that the applicant and her family suffered during the 1990s.

41. In the context of her submission that the applicant had not demonstrated a subjective fear of persecution, counsel further argued that the applicant's statelessness and inability to return to Libya is not a ground on which refugee status can be granted per se. Reference is made to the decision of the English Court of Appeal in *Revenko v. Secretary of State for the Home Department* [2001] 1 Q.B. 601 where it was held that Article 1A(2) of the Geneva Convention should be read as a whole and in the context of the object and purposes of the Convention. The Court held in *Revenko* that Article 1A(2) sets out a single test of refugee status for applicants, making no distinction between those possessing nationality and those who are stateless persons. In each case there is a need to show a well-founded fear of persecution on Convention grounds. Such a fear is therefore a prerequisite of refugee status and accordingly, mere statelessness or inability to return to one's country of former habitual residence is insufficient of itself to confer refugee status.

42. The Court was also reminded that the applicant was married to a refugee and had a child born in the State and had family reunification rights.

**THE COURT'S ASSESSMENT**

43. I must stress that there is no obligation upon a decision-maker to refer to each and every piece of information that is before him. As has been said countless times before, the decision-making process must be a workable one and impractical requirements should not be imposed upon Tribunal Members. However the real question in this case is not whether the Tribunal Member should have recited and thus demonstrated that he had considered crucial or essential aspects of the applicant's evidence before coming to a conclusion but whether he did consider that evidence.

44. The specifics of the applicant's evidence have remained consistent, i.e. that she and her sisters did not continue their third level education or go out because of fears of harassment, assault and rape. This fear came from stories they had heard of Palestinian girls being raped by Libyan men and also from their sister's experience of daily harassment while at university. This fear caused their mother to withdraw them from university and their brother to drive them, deliver them and collect them everywhere while they hid in the car. They did not want it to be known that four women lived in the house and they generally lived in fear of attack. These events and the history of persistent harassment suffered by the applicant's sister grounded her claim to refugee status and were the reasons why the applicant did not continue her education in Libya and why she came as a student to Ireland.

45. While the applicant relied on her past experiences in Libya to ground her claim, the main element of her need to be declared a refugee derived from her stateless position as a Palestinian. The ORAC stage documents indicate that the applicant focused largely and even primarily on this status and on her precarious position in this State now that her student visa had expired and on the fact that she was not permitted to return to Libya. As much of the discussion in this

leave application related to statelessness in refugee law, I was referred to the very useful and helpful examination of that law by the English Court of Appeal in *Revenko v. Secretary of State for the Home Department* [2001] 1 Q.B. 601. It is obvious that the status of such persons has been the subject of considerable debate and divided opinion. Counsel for the applicant in *Revenko* argued from a not dissimilar premise to the applicant in this case. Mr. Revenko was a Russian born in Moldova, which at the time formed part of the Soviet Union. When Moldova became an independent state in 1991, he was not entitled to citizenship. He was outside the country and found that he was unable to return. He applied for asylum in the U.K. in 1996 but his application was refused as he was unable to establish a well-founded fear of persecution and it was found that he had never applied for citizenship. He had argued that the object and purpose of the Geneva Convention relating to the Status of Refugees 1951 is to provide a surrogate international protection for those who cannot find such protection from their own states. He contended that in the case of a stateless asylum seeker, there is by definition no state of nationality that can provide that protection and that it was sufficient to qualify as a refugee that he was stateless and could not return to the country of his former habitual residence. He argued that in such case it was not required to also prove a well-founded fear of persecution. This view was not accepted. In arriving at their decision the learned Judges viewed and considered a number of Australian and Canadian decisions. Those cases held that even an asylum applicant who was a stateless person and who was unable to return to the country of his former habitual residence had to show a well-founded fear of persecution for a Convention reason. The text of the Convention was interpreted and leading academic views on the issue were examined. At the end of the day, it was held that a current fear of persecution had to be present in order for an applicant who was stateless to establish that he was a refugee. This view, it was said, is consistent with the views expressed by Hathaway, the UNHCR Handbook, the Council of Europe and a literal interpretation of the Convention definition. I therefore adopt the findings of the Court of Appeal in *Revenko*. The applicant has to establish a well founded current fear of persecution for a Convention reason and a stateless person who does not fear such persecution is not eligible for protection under refugee law.

46. The secondary aspect of the applicant's claim for asylum related to the previously described past events where, as Palestinians, she and her family suffered discrimination in Libya. This second element was fully advanced by her legal representatives in the Notice of Appeal and at the oral appeal hearing. Almost all of this information of past discrimination directed towards Palestinians was summarised in the Tribunal Member's decision which went on to find that this did not amount to any more than a difficult time because of "Mr. Gadaffi's well known mercurial policy shifts."

47. As the impugned decision shows that the detail of both the first and second element of the applicant's claim were extensively recited I am satisfied that the Tribunal Member must have been aware that these details were presented to establish a well founded fear of persecution on cumulative grounds. The decision actually repeats this argument and quotes the applicant's own expression of her fear that if returned to Libya, she would be uncertain about the future "because of her Palestinian ethnicity and that Libyans would show no respect" for her. The decision notes that she told the Tribunal that conditions had worsened since she had left Libya but she nevertheless deeply wanted to return to see her mother but was not permitted to do so. In that context, the Tribunal Member considered the law of what constitutes a refugee and what constitutes persecution looking to well-established authorities in the writings of Goodwin-Gill and Hathaway and he had regard to the Convention definition. He accepted that the applicant was entirely truthful but found that he was not in a position to extend the benefits of the Refugee Convention to her because "[t]he evidence does not suggest that she has a well-founded fear of returning to Libya for the reasons given during the course of her appeal."

48. At first glance, the RAT decision lacks the precision and clarity aspired to by decision makers as the reader has to look back at what the applicant's reasons for applying for asylum were to understand the decision. While it is perhaps undesirable that it is left to this Court to seek to elucidate the thought process of the Tribunal Member, it seems to me that there are several ways in which the conclusions may legitimately have been reached. The Tribunal Member states that he accepted that the applicant's sister is a refugee because of established persecution but he assessed the applicant's evidence as not being of the same degree of seriousness and found that the applicant had not suffered persecution. As the file relating to the applicant's sister's successful application for refugee status was not before the court but was available to the Tribunal Member, it is not possible to evaluate or compare the two stories which led to the finding that the applicant did not suffer the same degree of discrimination or persecution as her sister, nor was leave granted to the applicant to argue that the finding was irrational or unreasonable or reached in breach of fair procedures. However, for reasons which I will come to later, I do not believe that this information would make any material difference to the validity of the ultimate conclusions.

49. The Tribunal Member found that the applicant's evidence did not suggest that she was targeted for any particular reason while she was living in Libya and this appeared to be one of the findings which led to the conclusion that she did not suffer past persecution. One view of this finding is that the Tribunal Member considered that the applicant's experiences in Libya prior to coming to Ireland and her inability to now return there did not cumulatively amount to persecution. Another view is that he found that she has not established a subjective fear of persecution because she says she is willing to return to Libya to visit her mother, if permitted. Either or both approaches were equally open to him.

50. Undoubtedly, it would be preferable if matters to which he attached weight and those which he considered less significant were more clearly stated but there is nothing before me to suggest that he did not consider the applicant's evidence and submissions in total, which is the basis for impugning the decision. There was evidence before the Tribunal Member on which he could have reached the conclusions that he did and it was specifically argued that no case was being made on irrationality or unreasonableness or that he took irrelevant considerations into account.

51. On the basis of the summary of the evidence and the findings, I do not believe that it can be established that the Tribunal Member did not consider the first three issues on which leave was granted which were bases on: his failure to consider submissions relating to the refusal of the Libyan state to readmit her, other vital evidence or the extent to which the applicant lived her life in fear, curtailing activities in an attempt to avoid attack as evidence of persecution. While not every single fact was repeated in the summary, there is no evidence before me that the Tribunal Member did not take all that was said or submitted into account. The applicant therefore fails on these grounds.

52. The final ground on which leave was granted has given me great difficulty. I have been unable to decipher what a "failure to have regard to the applicant's fear of persecution and in relying solely upon and having sole regard to the presence or absence of persecution itself. In so doing the first named respondent failed to have regard to relevant considerations" means. This ground was not specifically addressed in the applicant's arguments as it appears to have been subsumed into the ground that the Tribunal Member failed to consider all the relevant evidence. The applicant relied on paragraphs 54 and 55 of the UNHCR Handbook to advance this failure to consider all the evidence point generally. As far as I could understand the argument, it was that the Handbook envisages situations where past discriminatory

measures suffered by an applicant - as occurred in this case - may not of themselves be of sufficiently serious character to ground persecution but if this past discrimination gives rise to an apprehension and insecurity regarding her future life in Libya, this could be considered to constitute persecution. Counsel for the applicant relied on the UNHCR Handbook in positing that because the applicant has already been subject to discrimination or to direct threats of discrimination, this was a serious indication of a risk of persecution in the future unless a radical change of conditions has taken place since then in Libya. Her argument is that the Tribunal Member simply did not consider this possibility.

53. If I am correct in this assessment of the applicant's arguments, I believe that the applicant is right in asserting that this is a matter that in appropriate circumstances, could give cause for consideration by a Tribunal Member. However, the applicant faces two major difficulties in establishing that it should have been considered by the Tribunal Member in this particular case. The applicant's arguments were that her past experiences, taken with her inability to return, amounted cumulatively to current persecution but she did not make the case either in her appeal documents or in her evidence at the appeal hearing that these factors created an apprehension of future persecution creating an unwillingness to return to Libya. On the contrary, she made repeated assertions that she would return to Libya if permitted and her frequent attempts to obtain visas for visits are not demonstrative of any such feeling of apprehension or unwillingness to return. It is very probable that any feeling of apprehension she may have about her future arises from her precarious immigration status and not a fear of returning.

54. The second difficulty is that the applicant did not submit any objective evidence to corroborate her subjective fear and the only objective evidence that was before the Tribunal Member (which was attached to the s. 13 report) indicated that the many Palestinians who work in Libya occupy positions that require higher qualifications, both in the private and public sectors.

55. The Tribunal Member quite humanely did not attribute any significance to the emphasis which the applicant placed on her stateless status relative to her fear of persecution, so this was not held against her. It was accepted without controversy that the applicant cannot return to Libya and that this is due to Libyan policy generally restricting the re-entry rights of Palestinians who have left to study abroad. COI indicates that Libyan citizens do not suffer the same hindrance although they are questioned on their period abroad on their return but Palestinians who leave, may not return and those within the country, such as the applicant's mother, apparently cannot leave. While I personally find the applicant's assertion that the mother cannot leave - even to visit her children - difficult to accept without further enquiry, the ORAC and RAT accepted all aspects of the applicant's narrative as credible and truthful.

56. Did this policy establish discrimination or persecution? The policy of the Libyan State in controlling the movement of the Palestinian population within its boundaries may constitute discrimination or it may equally be consistent with the exercise of Libya's legitimate right to regulate immigration. There are after all always many hundreds of thousands of Palestinians in the Middle East who seek temporary refuge in safe countries in which to work and live. Libya is entitled to determine whether rights to reside must be maintained to those immigrant Palestinians who leave for considerable periods. The Tribunal Member did not expressly address this issue but I do not believe that the absence of analysis of the reasons for her inability to return to Libya affects the validity of his conclusions.

57. Although no reference to *Revenko v. Secretary of State for the Home Department* [2001] 1 Q.B. 601 appears in the decision, the conclusion reached accords fully with that decision, which established that statelessness per se does not confer refugee status: a well-founded current fear of persecution on Convention grounds must be demonstrated. As there was no COI information before the Tribunal Member that Palestinians are currently persecuted in Libya, it was found that the applicant had not established the requisite well-founded current fear of persecution for a Convention reason if returned to Libya and her asserted stateless status therefore became irrelevant.

58. Unfortunately, the applicant's application fails and the decision of the Refugee Appeals Tribunal stands.