

UNRWA assisted Palestinians

Claims for asylum from UNRWA assisted Palestinians: Article 1D of the Refugee convention

1. Article 1D of the Refugee Convention

Article 1D of the Refugee Convention is one of the exclusion clauses. It provides as follows.

"This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention."

2. Organs or agencies of the UN for the purposes of Article 1D

There is only one organ or agency of the United Nations to which Article 1D applies. That is UNRWA - the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

3. What is UNRWA?

UNRWA was established by the UN General Assembly following the 1948 Arab-Israeli conflict in order to carry out direct relief and works programmes for Palestine refugees. UNRWA operates in five areas: Jordan, Lebanon, Syria, the West Bank and the Gaza Strip. Many Palestinians living in these areas will be registered with UNRWA and receiving assistance from it, but not all Palestinians are in receipt of such assistance.

4. Relevance of Article 1D to UNRWA assisted Palestinians

The first paragraph of Article 1D provides that the Refugee Convention shall not apply to persons who are at present receiving protection or assistance from a UN body other than UNHCR.

The meaning of "at present" was considered by the Court of Appeal in the case of *El-Ali and Daraz* "[2002] EWCA Civ 1103". The Court held that the term "at present" related to the date on which the Refugee Convention was signed - 28 July 1951. This means that Article 1D is relevant only to a person who was receiving protection or assistance from UNRWA on 28 July 1951. It is not relevant to anyone else, not even to the descendants of people who were receiving such protection or assistance on that date.

The effect of this judgment is that very few Palestinian asylum claimants will be covered by Article 1D.

5. Dealing with asylum claims from Palestinians to whom Article 1D does not apply

The great majority of claimants will fall into this category, namely:

- people who were not born on or before 28 July 1951;
- people born on or before 28 July 1951 but who were not UNRWA assisted on that date (28 July 1951).

Asylum claims from claimants in this category should be considered in the normal way. In many cases the fear of being persecuted will need to be assessed in relation to the claimant's country of former habitual residence as they will have no country of nationality. Relevant country information can be obtained from the Country of Origin Information Service.

6. Dealing with asylum claims from Palestinians to whom Article 1D does apply

Very few claims will come into this category. Article 1D will be applicable only where a claimant:

- (i) was born on or before 28 July 1951; and
- (ii) was in receipt of protection or assistance from UNRWA on 28 July 1951.

For the purposes of (ii), anyone who is UNRWA registered will normally be considered to have been in receipt of such protection or assistance on 28 July 1951, unless the contrary can be shown. There may be some, very rare, cases where a person is not UNRWA registered but there is evidence that they were nevertheless in receipt of UNRWA protection or assistance on 28 July 1951, in which case (ii) would also apply.

Clearly, a claimant will not be receiving such assistance whilst in the UK, but that is not the relevant issue. The relevant issue is whether they were in receipt of such assistance on 28 July 1951. The Court of Appeal held that the second paragraph of Article 1D concerning what happens once "protection or assistance has ceased for any reason" becomes applicable only when UNRWA itself ceases to operate. A person who ceases to receive assistance from UNRWA by virtue of coming to the UK and leaving the area in which UNRWA operates does not benefit from the second paragraph of Article 1D.

Where a claimant meets the criteria in both (i) and (ii) they will be covered by Article 1D. Such a person is excluded from the scope of the Refugee Convention for so long as UNRWA continues to operate. Accordingly, an asylum claim from such a claimant would fall to be refused on the ground that the person is not a Convention refugee. This would be so even where the

claimant could show a well-founded fear of persecution on one of the five Convention grounds.

Consideration should be given in the normal way as to whether the claimant qualifies for Humanitarian Protection or Discretionary Leave. Where this is considered appropriate, the period of Humanitarian Protection or Discretionary Leave should be in accordance with normal practice. A claimant who has a well-founded fear of persecution but is excluded from being a refugee by Article 1D would normally qualify for leave on the basis of Humanitarian Protection. See the APIs on **Humanitarian Protection** and **Discretionary Leave**.

7. Statelessness issues

An asylum claim from a Palestinian may be accompanied by a claim to stay in the UK on the grounds that they are stateless. The UK is a signatory to the 1954 UN Convention on the status of Stateless Persons, but that Convention does not require signatories to grant leave to stateless persons. There is no provision in primary legislation, the Immigration Rules or Home Office published policies that requires leave to be granted to a person on the basis that they are stateless. Such a claim would therefore fall to be refused on the grounds that leave is being sought for a purpose not covered by the Immigration Rules.

The 1954 Convention relating to the Status of Stateless Persons has a similar, although not identical, provision to Article 1D of the Refugee Convention. This is Article 1(2)(ii). This provision should be interpreted as meaning that a person who was receiving protection or assistance from UNRWA on 28th September 1954 (the date that Convention was signed) is not covered by the terms of the Stateless Persons Convention, even if they otherwise meet the definition of statelessness set out in that Convention. Again, the numbers covered by this exclusion provision will be relatively low.

Enquiries: Further enquiries should normally be made in writing via a Senior Caseworker to APU.