



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/05689/2013

THE IMMIGRATION ACTS

**Heard at Newport
On 20 March 2014**

Determination Sent:

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB**

Between

**DB
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Chaudhry of Duncan Lewis and Co Solicitors

For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited us to rescind the order and we continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

Background

2. The appellant is a citizen of Algeria who was born on 1 February 1969. On 29 May 2013, the appellant claimed asylum with his wife, son and daughters as his dependents. On 29 May 2013, the Secretary of State refused the appellant's application for asylum and on that date made a decision refusing him leave to enter. The appellant appealed that letter decision to the First-tier Tribunal.
3. Before the First-tier Tribunal, the appellant's claim was that he was a supporter of, and worked for, the Algerian Popular Movement (MPA), a political party in Algeria founded in 2012. He claimed that he worked for the leader of the party and his brother. The appellant claimed that he promoted the party by distributing leaflets and speaking to the public. His wife promoted the party policy concerning women. The appellant claimed that at the beginning of November 2012 he received a threatening telephone call at the MPA offices from an unnamed political group which demanded that the appellant leave the MPA and join it. He subsequently received a threatening letter and a further telephone call from the group. He was told not to report these incidents to the police or his manager and he did not do so. However, he and his wife were frightened and put in fear of their lives. The appellant and his family came to the UK in December 2012 as visitors before returning to Algeria after 15-17 days. The appellant said that he did not claim asylum because he did not know how to and his family ran short of money so they returned to Algeria. On returning to Algeria, in January through February 2013, the appellant and his wife did not remain at their family home but moved around. In March 2013, a second threatening letter arrived at the appellant's home insisting that the appellant left the MPA party or he and his family members would be killed. A few days later, the appellant and his family travelled to the UK where they claimed asylum.

The Appeal

4. The First-tier Tribunal (Judge McLachlan) dismissed the appellant's appeal. Judge McLachlan rejected the appellant's account. She did not accept that the appellant had been involved with the MPA as he claimed or that he and his family had been threatened by members of a rival group. In addition, Judge McLachlan found that the appellant and his family could, in any event, safely internally relocate elsewhere in Algeria where the Algerian authorities would provide a sufficiency of protection.
5. The appellant sought permission to appeal on a number of grounds. On 14 August 2013 the First-tier Tribunal (DJ Lewis) granted the appellant permission to appeal. Thus, the appeal came before us.

Discussion

6. The majority of the grounds relate to the Judge's adverse credibility findings. Before turning to those, we deal first with three other matters raised in the grounds.

7. First, it is argued that the Judge wrongly considered the risk to the appellant from the Algerian authorities when his fear was from non-state actors in Algeria. That submission (at para 8 of the grounds) is directed to para 39 of the Judge's determination which is in the following terms:

“39. I find that the Appellant and his dependants do not have a well-founded fear of persecution and their return to Algeria will not involve any of them in risk upon return. The Appellant and his family members travelled without problems from Algeria on their passports without attracting the adverse interest of the Algerian authorities. Case law has established that merely being a failed asylum seeker would not place them at risk upon return. The Appellant has not claimed that members of his family are associated with Islamist groups. In fact the MPA is a secular political party.”

8. This ground is wholly without merit. Throughout the determination, Judge McLachlan deals with the appellant's claim to be a member of the MPA and to have been threatened by a rival political group. In the paragraphs leading up to paragraph 39, Judge McLachlan gave a number of reasons for not accepting the truth of the appellant's claim. In paragraph 39, the first sentence is clearly a conclusion based upon her assessment of the evidence relating to the risk claimed to arise from that rival group. The remainder of paragraph 39 is clearly directed to the issue of whether nevertheless, even in the absence of that risk, the appellant would be at risk on return as a failed asylum seeker from the Algerian authorities. The Judge concluded, entirely correctly, that the appellant would not be at risk on that basis either. There is no basis for suggesting that the Judge misunderstood the nature of the appellant's claim and her adverse finding in the first sentence of paragraph 39 of her determination is a conclusion based upon an assessment of the evidence relating to that claim.
9. Secondly, the grounds argue that the Judge erred in law in failing to consider the possibility of an adjournment as the appellant was unrepresented. The grounds assert that the appellant was at a disadvantage in dealing with questions put to him by the Presenting Officer and, as a vulnerable individual, the Judge had failed to take into account whether there could be a fair hearing without legal representation. Mr Chaudhry accepted before us that there was no evidence to support what was said to be the impact upon the appellant at the hearing. It is clear to us on reading the determination that the appellant had a full opportunity to present his case including giving oral evidence before the Judge. We see nothing unfair in the Judge hearing the appeal despite the absence of any legal representation by the appellant.
10. Thirdly, the grounds assert that there were difficulties with the interpreter at the hearing and the appellant was not asked whether he was satisfied with the interpreter. Again, Mr Chaudhry accepted before us that there was no evidence to support this ground. Nothing in the determination suggests that the appellant even raised any difficulty with the interpreter at the hearing. That is by contrast with the appellant's position that

answers given at interview had not been correctly interpreted. The Judge rejected this part of the appellant's case at paras 29-30. In our judgment, there is nothing in the determination to suggest that there is any basis for the assertion in the grounds that the appellant's evidence at the hearing was, in any way, affected by difficulties with the interpreter.

11. Having rejected those aspects of the grounds, we turn to the points raised in relation to the Judge's adverse credibility findings.
12. First, it is argued that the Judge placed "unfair weight" on a minor inconsistency in the appellant's evidence. At para 24 of the determination the Judge took into account that the appellant had stated in evidence that the MPA was founded in January 2012 when, on the basis of the objective evidence, it was in fact founded on 17/18 February 2012. Paragraph 24 is as follows:

"24. The party was only founded in February 2012. I am satisfied that the Appellant should have known that date if, as he claimed, he had been involved since the party's inception. The Appellant wrongly stated that the MPA was founded in January 2012, rather than 17-18 February 2012. I am satisfied from the objective evidence that the Appellant was inaccurate as to his assertions on the founding date."

13. The grounds do not suggest that the Judge was wrong to identify an inconsistency between the objective evidence and that of the appellant. Rather, it is said that the Judge placed unfair weight upon it. It was one of a number of reasons given by the Judge in her determination for doubting the credibility of the appellant and it was an inconsistency which, in our judgment, the Judge was entitled to take into account given that the appellant's case was that he was involved with the MPA at the time of its formation in 2012.
14. Secondly, the grounds argue that the Judge was wrong to take into account, in assessing the credibility of the appellant's account, that his wife in her evidence had given an incorrect name for the MPA. At paragraph 28, the Judge dealt with the evidence of the appellant's wife as follows:

"28. The Appellant claims that his wife also worked for the party dealing with women's issues but when she was asked at the screening interview for the name of the party for which she worked, she called it the "Mouvement Patriotique Algerienne", rather than the correct name of "Mouvement Populaire Algerien". I reject the Appellant's suggestion that his wife responded incorrectly at interview because she was scared and panicking. She answered all other questions at the screening interview with clarity and accuracy." (our emphasis)

15. We are in no doubt that the Judge was entitled to take this discrepancy into account given the accuracy of all the other answers given by the appellant's wife at the screening interview. It was not, in our judgment, a "small error" which the Judge could not properly take into account for the

appellant's wife to substitute "Patriotique" for "Populaire" in the name of the political party which the appellant claimed that she supported and furthered its policies on women's issues.

16. Thirdly, the grounds argue that the Judge was wrong to take into account the fact that the appellant wrongly, in his evidence, recalled the colours of the party logo. At para 31 the Judge said this:

"31. The Appellant has provided cards, allegedly confirming the membership of himself and his wife in the MPA. I am not satisfied that the Appellant has shown those cards to be reliable evidence of his support for and activities on behalf of that party. The cards themselves are pristine in appearance, and although they bear the photographs of the Appellant and his wife, they are apparently of so little significance to the Appellant that he could not state correctly the colours of the party displayed on his card and, as far as his wife is concerned, she could not repeat the title of the party, although that is set out on the reverse of the card allegedly belonging to her."

17. When we enquired of Mr Chaudhry what were the relevant colours on the cards he told us that they were green and red. The appellant identified the colours as green and white. We fail to see how that difference can be properly described as only "slightly incorrect". The Judge was, in our view, entitled to take into account (in addition to the appearances of the cards) the appellant's inability correctly to identify one of the two primary colours in the logo of the party he claimed to support and to have worked for.

18. Fourthly, the grounds argue that the Judge was wrong to take into account that the appellant had applied for visit visas to the UK some weeks before he claimed that he had been first telephoned and threatened in early November 2012. The grounds argue that on a "careful reading of the appellant's substantive asylum interview", the appellant had said that he had applied to come to the UK as a visitor in order to have a holiday rather than because of any fears in Algeria. The grounds argue that the Judge misunderstood the chronology of events in para 38 of her determination.

19. Paragraph 38 is in the following terms:

"38. His truthfulness is also demonstrated by the fact that the applications for visit visas were made some weeks before the first claimed telephoned threat to the Appellant which took place in early November 2012. The Respondent has pointed out that the visas were applied for on 10/10/2012, although I note from the copies of the applications contained in the Respondent's bundle, the applications were applications submitted online on 20/09/2012. Whichever date is correct, it is quite clear that the applications for visas were made several weeks before the claimed first approach to the Appellant by the alleged terrorist group. Therefore, on his own account, the Appellant cannot have intended to have obtained visit visas in order to facilitate his arrival in the UK in order to claim asylum. "

20. In his asylum interview at Question 53, the appellant was asked, “Why did you apply for a visa in 10th October 2012?” to which he replied “I applied for a holiday as a tourist”.
21. Whilst the evidence may not have shown that the appellant said he applied for visas to the UK because of what he feared in Algeria, it is clear that his evidence was that by the time that he and his family travelled to the UK in December 2012 it was with the intention of claiming asylum. The Judge set that evidence out in para 36 of her determination. It was the appellant’s evidence that he did not claim asylum because he did not know how to and his family ran short of money. However, it was also the appellant’s evidence that he had lied on his visa application form in order to obtain the visas. The Judge dealt with the appellant’s evidence at paragraph 36 as follows:
- “36. The Appellant claimed that when he travelled with his family to the UK at Christmas 2012, it was with the intention of claiming asylum because he and his wife were so fearful of what was happening to them in Algeria. He stated that he did not know how to claim asylum although he was subsequently advised by another Algerian that one went to an immigration officer at the airport. The family ran short of money in the UK and so returned to Algeria. The Appellant and his wife are both intelligent well educated, articulate people holding responsible positions in employment in Algeria at the local university. I do not find it to be believable that, if the Appellant wished to claim asylum, he would not have ascertained exactly how to do that. Evidently, he is able to access internet information. The Appellant has admitted that he lied on his visa application form when applying for visit visas by stating that he and his family intended to visit a friend, Abderrahmane Mazit, living in Folkestone, Kent. In oral evidence, he stated that there was such a person who was a friend of a friend, but the invitation issued was a sham in order to obtain visas. There was never an intention to visit the man. It was a device he employed in order to facilitate the issue of visas to himself and his dependants.”
22. At para 37 the Judge continued:
- “37. I conclude that the Appellant has shown himself to be dishonest in his dealings with the UK authorities in obtaining the issue of visit visas to himself and members of his family, so too his being untruthful in his claim to fear persecution. I do not believe that if the Appellant wished to claim asylum, he could and would not have done so on his visit to the UK in December 2012. The fact that he did not, undermines his credibility.”
23. Those paragraphs immediately precede the paragraph challenged in the grounds, namely paragraph 38 of the determination. It was, in our judgment, properly open to the Judge for the reasons she gave to take into account the circumstances in which the appellant had sought (dishonestly) visas to come to the UK and also had not, despite his claimed fears in Algeria, made a claim for asylum in December 2012 but, instead, had returned to Algeria.

24. In conclusion, we see no basis in the grounds for concluding that the Judge's determination contains an error of law which justifies setting aside her adverse credibility findings. The Judge gave a number of other reasons, including the appellant's lack of knowledge of the MPA which he wrongly described as an Islamic party when the objective evidence showed that it was a secular party (see para 26 of the determination). Further, the Judge identified a number of inconsistencies in the appellant's evidence concerning the circumstances in which he claimed to have been threatened, including the number of telephone warnings he had received. The Judge was also entitled to take into account that it was implausible that the appellant would not have told others (particularly within the MPA) of the threat that had been made against him and that he did not know what group had threatened him despite it being part of his claim that they wished him to leave the MPA and join them.
25. In our judgment, the Judge did not err in law in reaching her adverse findings and concluding that the appellant had failed to establish that he was at risk on return to Algeria.

Decision

26. For these reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal stands.
27. The appellant's appeal to the Upper Tribunal is dismissed.

Signed

A Grubb
Judge of the Upper Tribunal

Date: