



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

Appeal Number: AA/09311/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 26th August 2015**

**Decision & Reasons Promulgated
On 15th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**Mr GHASSAN ALBADAWI
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr Kandola, Senior Home Office Presenting Officer

For the Respondent: No appearance

DECISION AND REASONS

- 1 The present appeal is brought by the Respondent Secretary of State for the Home Department against the decision of the First tier Tribunal (Judge Maxwell) dated 19th of June 2015, in which the First tier Judge allowed on the appeal brought by the Appellant against the decision of the Respondent of 30 November 2014 to refuse him leave to enter the United Kingdom, and to remove him into Algeria. I shall retain the designations of the parties before the First tier, i.e. that Mr Ghasan Albadawi is the Appellant and the Secretary of State for the Home Department is the Respondent.

- 2 The appeal was called on at 10:40 am but there was no appearance by or on behalf of the Appellant. I caused enquiries to be made to those acting for the Appellant, JD Spicer Zeb Solicitors, and I received a message from Ms K Dhanjal of that firm that neither they nor the Appellant had received notice of hearing of today's hearing. The Tribunal file contains a notice of hearing dated 23rd of July 2015 addressed to the Home Office Presenting Officers Unit, JD Spicer Zeb solicitors, and to the Appellant personally. I determined that it was not necessary to establish whether or not this notice of hearing had been posted out to the Appellant and their representatives, because I was, on a preliminary basis, inclined to proceed with the appeal in the Appellant's absence, as his absence was not likely to prejudice his case.

Background and First tier decision

- 3 The background to this appeal is that the Appellant is a national of Syria. He worked as an accountant and left Syria in June 2012, asserting that he was in danger from the Syrian authorities, who, he asserted, had killed his uncle. He moved to Algeria, later marrying an Algerian National.
- 4 He left Algeria and travelled to the United Kingdom on 31 January 2014, claiming asylum upon arrival. He asserted that he was at real risk of harm in Syria on the basis of an imputed political opinion. He also asserted that he was likely to be re-fouled from Algeria to Syria if he were to be returned to Algeria. The Respondent refused his claim for asylum in a letter dated 30th October 2014, and made a decision refusing leave to enter on the same date.
- 5 The Appellant appealed against that decision and the matter came before the First tier Tribunal on 4 June 2015. In a thorough and well reasoned decision, the Judge rejected the historical account that the Appellant gave of having problems in Syria. He also rejected an assertion by the Appellant that his mother-in-law in Algeria had made a complaint against him to the Algerian authorities, which might have caused him to be removed to Syria.
- 6 The Appellant had also engaged in some *sur place* activities in the United Kingdom which included demonstrating outside the Syrian and Russian Embassies in London, and taking part in an interview with the BBC, said to have been broadcast on the Arabic network. The Judge was of the view that any demonstration outside the Russian Embassy in London would not cause him to be of any adverse interest to the Syrian authorities. Further, there was inadequate evidence of the Appellant's participation in the BBC interview. However, the Judge did accept that the Appellant had demonstrated outside the Syrian Embassy, and there was photographic evidence to support that contention. The Judge held:

“46. The respondent, in considering the monitoring of suspected persons inside Syria draws the conclusion that there is a significant level of surveillance (see paragraph 17 of the Refusal). Further, given the present circumstances prevailing in Syria I find there is a reasonable prospect of

them identifying the appellant who, were he to fall into their hands as a demonstrator and failed asylum seeker would be at serious risk.”

7 The Judge also held at paragraph 51:

“In the light of my findings in respect of the Appellant’s *sur place* activities at the Syrian Embassy in London there is now a reasonable prospect he will be regarded as a dissident by the Assad regime.”

8 However, it is to be recalled that the Respondent did not intend to remove the Appellant to Syria, but rather to Algeria, where he last resided and where his wife continues to live. The Appellant argued that he would be re-fouled from Algeria to Syria. He relied upon the reported case of RR (refugee-safe country) Syria [2010] UKUT 422 IAC, in which the Upper Tribunal, having considered the evidence before them and the relevant case law, concluded at paragraph 30(g):

“Perhaps the most telling item of evidence is that which the Secretary of State in fact produced in response to directions from the Tribunal seeking her assistance in obtaining information from the Algerian Embassy. The Secretary of State was able to obtain an opinion from an Honorary Legal Advisor to the Algerian Embassy which noted that co-operation agreements between the two countries covered the security aspects and, in the Honorary Advisors own words, “Algeria would in this context, hand over opponents of the Syrian regime”. Given the appellant’s family profile we considered reasonably likely that the claimant could be seen to fall under such agreements.”

9 Judge Maxwell held at para 53-54:

“53 The appellant does not have permanent status in Algeria. Although he does not require a visa to re-enter Algeria, his Syrian passport has expired therefore at some point he would need to draw himself to the attention of the Syrian authorities which would, in my judgement place him at risk if this took place in Algeria as it would alert the Syrian authorities to his presence in that country.

54. Although I find the appellant has placed himself at risk and has done so deliberately by his actions since December 2014, the test still remains the risk of refoulement if returned to Algeria and, for the reasons I have already given, I am forced to the conclusion such a risk exists and that the appellant has proved, to the lower standard required, this is a real risk and that for him Algeria is not a safe third country.”

10 Accordingly the appeal was allowed on asylum grounds.

11 The Respondent sought permission to appeal to the Upper Tribunal in grounds dated 25 June 2015. The grounds assert that the First tier Judge misdirected himself as to the application of the case of RR Syria and that a letter to the FtT written by Mr Milstead, Home Office Presenting Officer, dated 13th of May 2015 addressing the relevance of RR Syria, had not been taken into account by the Judge. It was asserted that the Judge had not properly considered ‘the evidence’, no reference had been made to the length of time since RR was decided, or of the different context in which that case had been decided. It was argued that the reasons

advanced by the Judge for finding that the Appellant had demonstrated a real risk of being re-fouled from Algeria to Syria were flawed.

- 12 Permission to appeal was granted by Judge of the First tier Tribunal Fisher on 6th July 2015 on the basis that it was arguable that the Judge had erred in law by failing to consider the Secretary of State's letter, or in failing to deal with the points raised therein.

The hearing before the Upper Tribunal

- 13 Noting that the Appellant was not present at the hearing today, I nonetheless invited Mr Kandola to address me on the Respondent's grounds of appeal. He did so, adopting those grounds of appeal making little if any amplification upon them.
- 14 I was able to give my decision in open court, which I now confirm in this written decision.

Discussion

- 15 I find that there is no material error of law in the First tier decision allowing the Appellant's appeal.
- 16 The arguments advanced in the Respondent's letter 13th May 2015 may fairly be summarised as follows:
- (i) The case of RR highlighted examples of where the Algerian authorities had re-fouled Syrian nationals; however this was prior to the start of the civil war and it was to be noted that the examples provided were of opponents to the Syrian authorities and those considered to be security risks in Algeria such as Syrian Muslim Brotherhood and those considered to be security risks in Algeria.
 - (ii) It was argued that the Appellant's case was entirely different in that the Appellant was not considered to be actual or perceived opponent of the Syrian regime. It was argued that he was not of adverse interest to the Algerian authorities for any reason. There would be no evidence available which would suggest that the Appellant would be a real risk of refoulement to Syria by the Algerian authorities.
 - (iii) It was further argued that when he was resident in Algeria the Appellant had been able to extend his Algerian residents permit.
- 17 I deal first with the suggestion that this document was not taken into account by the First tier Judge. I am of the view that the Respondent's argument in that regard is not made out. At paragraph 7 of the FtT decision, the Judge says "The appellant gave oral evidence through an interpreter and I heard submissions from both representatives". In my view, the Respondent's letter of 13th May 2015 may be rightly described as part of the Respondent's submissions. It certainly does not contain any evidence. The Judge says he took into account the submissions from both representatives.

- 18 Further, at paragraph 10 of the decision, the Judge notes:
- "In reaching my decision I have taken into account the following documents which were before me:
- (i) ...
 - (ii) A supplementary bundle of documents filed by the respondent, including a typed copy of the Appellant's asylum interview."
- 19 I note that the Respondent's letter of 13th May states that it is a document of seven pages (even though the representations themselves are only two pages long). The first paragraph of the letter states that a typed transcript of the Appellant's substantive asylum interview was attached to the letter. I am therefore satisfied that the supplementary bundle of documents referred to at para 10(ii) of the Judge's decision included Mr Milstead's letter of 13 May 2015, in addition to the typed transcript of the asylum interview.
- 20 In any event, even if (which I find not to be the case) the Judge failed to take the letter of 13 May into account, I am of the view that the arguments contained within that letter would have had no material effect on the way in which the immigration Judge approached the present appeal.
- 21 The Respondent's submission, within that letter, is essentially to the effect that the Appellant was of no interest to the Syrian authorities, or the Algerian authorities, prior to leaving Algeria and coming to the United Kingdom. Those arguments completely fail to engage with the Appellant's *sur place* activity in the United Kingdom, which resulted Judge finding at para 50 and 51 that he will be at real risk of serious harm in Syria, and would result in him being considered a dissident by the Assad regime.
- 22 Further, the Respondent's letter of 13th May does not in any way seek to challenge the validity or continuing effect of the Secretary of State's own evidence, referred to at paragraph 30(g) of the case of RR Syria, quoted above, in particular the reference to the Honorary Legal Adviser's note suggesting that Algeria would hand over opponents of the Syrian regime. The Judge had held that the Appellant would eventually have to bring himself to the attention of the Syrian authorities present in Algeria. There is no challenge within the Respondent's grounds of appeal to that finding of fact.
- 23 Further, the argument in the Respondent's letter of 13th May that the case of RR Syria was decided prior to the start of the civil war in Syria does nothing to reduce the effect and relevance of the evidence referred to in that case. If anything, the Syrian authorities are now likely to be more sensitive about political opponents and dissidents, during the civil war, than they were prior to it.
- 24 Further, when the Secretary of State's letter suggests that the case of RR dealt with opponents to the Syrian, it is clear that that is exactly what the

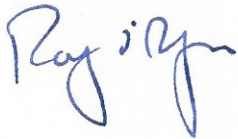
First tier Judge held the Appellant would be viewed as, by the Syrian authorities.

- 25 I therefore conclude that the First tier Judge did take into account the Respondent's letter of 13th of May 2015. Further or in the alternative, if he did not, the arguments advanced within that letter would do nothing to demonstrate that there was any material error of law in the reasoning applied by the Judge in finding that the Appellant would be at risk of being refouled by the Algerian authorities to Syria, where he faced a real risk of serious harm.

Decision

- 26 I find that the making of the first tier decision did not involve the making of any error of law.
- 27 I do not set aside the First tier decision.
- 28 I dismiss the Respondent's appeal against the First tier decision.
- 29 In the light of my decision, I find that the Appellant's absence from the proceedings on the day of the hearing did not prejudice him.

Signed:



Deputy Upper Tribunal Judge O'Ryan

Date: 14.9.15