



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02843/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 4 January 2018
And 26 February 2018

Decision & Reasons Promulgated
On 29 June 2018

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

M L
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mackay, McGlashan Mackay Solicitors
For the Respondent: Ms R Pettersen, Senior Home Office Presenting Officer (04/01/18)
Mr Mullen, Senior Home Office Presenting Officer (26/02/18)

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge David Clapham promulgated on 8 July 2017, dismissing his appeal against the decision of the respondent made on 9 March 2017 to refuse his asylum, humanitarian protection and human rights claim.
2. In summary, the appellant's claim is that he is at risk on return to Algeria from the family of a woman, Miss Z with whom he had had a relationship and to which her family, who are Berbers, objected. The family had wished her to marry one of her first cousins but she did not wish to do so and the appellant and Miss Z left the country travelling first to Malta and then to France. Miss Z then decided to return to Algeria

on the basis that her father was ill in hospital. The appellant then continued to the United Kingdom where his sister lives.

3. The appellant's case is that he is at risk from Miss Z's family as they have made threats to him, had been going round his home area looking for him and had made anonymous threats to his parents.
4. The respondent was not satisfied that the appellant's account was true concluding that in any event there would be a sufficiency of protection for him in Algeria and/or that he would be able to relocate within Algeria to an area where he would not be at risk from Miss Z's family or the Berber tribe.
5. The judge heard evidence from the appellant as well as the appellant's parents who confirmed their witness statement which set out that they had received anonymous threats in respect of the appellant after he had left Algeria and that these continued until they left at some point in 2017 to come to the United Kingdom for a visit.
6. The judge considered the appellant's case to have been embellished and that he had grossly exaggerated the risks to him although he accepted that he had been in a relationship with Miss Z, had eloped first to Malta and then to France where she changed her mind. The judge noted that none of the threatening letters had been provided [56] and that "I simply do not accept that the appellant will be in any real or significant risk of danger on his return to Algeria. He could perfectly well go to a part of Algeria where he is not known." [57].
7. The appellant sought permission to appeal on the narrow grounds that the judge had failed properly to take into account the evidence of the parents. On that basis, the appeal came before me on 4 January 2018.

The hearing on 4 January 2018

8. I heard submissions from both representatives. I am satisfied that the judge failed properly to reach conclusions about whether he believed the appellant's parents or not. While recording their evidence he does not say whether he believes it or not. That is potentially material as they are both in a position to give direct first hand evidence that threats had been made about the appellant and that these threats had continued for a period of some two years after he had left Algeria. In that context, whilst the failure to provide documents might have had some relevance, it is of limited effect and it does not appear that the parents were asked why they had not done so.
9. Whilst this error may not have been material had the judge made proper findings as to the sufficiency of protection and all the availability of internal flight, he did not do so. The issue of sufficiency of protection is not touched upon at all and there is no attempt to identify any specific area where the appellant would not be at risk given that his claim was that he would be at risk in a significant part of the country in that the Berber clan are widespread.
10. For these reasons, the decision of the First-tier Tribunal did involve the making of an error of law and is therefore set aside.

11. Subsequent to the hearing, I gave a written decision setting out my reasons for setting aside the decision of the First-tier Tribunal, concluding that given the limited nature on which a further fact-finding exercise was necessary, which will be in the form of additional evidence, and submissions and issues on sufficiency of protection and internal relocation, that it would be proper to do so in the Upper Tribunal. I then gave directions as to how it should proceed at the resumed hearing on 26 February 2018

The hearing on 26 February 2018

12. I heard oral evidence from the appellant. In addition, there was put before me and additional inventory of productions including witness statements from the appellant's sister and mother and other documents relating to a car crash involving them in Algeria. There was also produced another statement from the sister and a report by Prof. Joffé.
13. The appellant confirmed in this oral evidence that he feared his former girlfriends family, their name being Z. Asked if there was any evidence of this family's reputation, he said that they had killed a man, Z, in a stadium although he accepted he had no evidence of that and that the perpetrator had not been brought to trial.
14. The appellant said that he met his girlfriend in a coffee shop opposite her student house. He had been living in his family home at the time, and that she had not gone there. Asked how the family found out where he lived, he said that on one occasion, they had been in his car with her cousin. He had stopped outside the house to get his phone which he had forgotten. This had been about 2 ½ months before they had left Algeria.
15. The appellant said that it was when his girlfriend had returned to Algeria that her family had found out about the relationship; they had had her examined by a doctor. He thought that the cousin had betrayed him to the girlfriend's family as not even the girlfriend had been to his address; he had not told the girlfriend his full address.
16. The appellant said that his older sister had had a car accident around Eid in 2017. She had been driving his car; their younger mother and their younger sister had also been in the car. He said he was sure it was not just an accident as the driver in the other car was from Kabyle, indicating he too was a Berber like the Z family. He said that his car was recognised as it was well-known, and that it was still registered in his name.
17. Re-examined, the appellant said that Z was not killed by the direct family of the girlfriend, but said that all the Kabyle were united.
18. I asked the appellant to describe his home in Algeria. He said it was a 16 storey block of flats. Asked how the girlfriends family could have known on which floor he lived, he said that he was well-known and that they had sent groups to the area looking for him.
19. The appellant said that his sister had been on her way home when the accident occurred. He said that he did not know how they had been able to find the car. Asked

to comment on why the police report said that the car was in his sister's name, he was cross-examined again, he said the car was now not in his name.

20. I then heard submissions.
21. After reserving my decision, I considered that on reflection, further submissions may be required in the light of what was said in two of the news articles relied upon as sources in Professor Joffé's report. The respondent did reply within time, but there has been no response from the appellant or his solicitors.

The Law

22. It is for the appellant to prove, on the lower standard, that he is at risk on return to Algeria of harm of sufficient seriousness to constitute persecution or engage article 3 of the Human Rights Convention.
23. The appellant's fear in this case is of non-state agents. As was noted in AW (Sufficiency of Protection) Pakistan [2011] UKUT 31 in Bagdanavicius the House of Lords at [2005] UKHL 38 left undisturbed the proposition set out by Auld LJ on real risk and sufficiency of protection in the Court of Appeal [2005] EWCA Civ 1605. These propositions are in the following terms:

"54. Summary of conclusions on real risk/sufficiency of state protection.

The common threshold of risk

1) The threshold of risk is the same in both categories of claim; the main reason for introducing section 65 to the 1999 Act was not to provide an alternative, lower threshold of risk and/or a higher level of protection against such risk through the medium of human rights claims, but to widen the reach of protection regardless of the motive giving rise to the persecution.

Asylum claims

2) An asylum seeker who claims to be in fear of persecution is entitled to asylum if he can show a well-founded fear of persecution for a Refugee Convention reason and that there would be insufficiency of state protection to meet it; Horvath [2001] 1 AC 489].

3) Fear of persecution is well-founded if there is a 'reasonable degree of likelihood' that it will materialise; R v SSHD ex p. Sivakumaran [1988] AC 956, per Lord Goff at 1000F-G.

4) Sufficiency of state protection, whether from state agents or non-state actors, means a willingness and ability on the part of the receiving state to provide through its legal system a reasonable level of protection from ill-treatment of which the claimant for asylum has a well-founded fear; Osman v UK [1999] 1 FLR 193], Horvath, Dhima [2002] EWHC 80 (Admin), [2002] Immigration Judge AR 394].

5) The effectiveness of the system provided is to be judged normally by its systemic ability to deter and/or to prevent the form of persecution of which there is a risk, not

just punishment of it after the event; Horvath; Banomova [2001] EWCA Civ.807. McPherson [2001] EWCA Civ 1955 and Kinuthia [2001] EWCA Civ 2100.

6) Notwithstanding systemic sufficiency of state protection in the receiving state a claimant may still have a well-founded fear of persecution if he can show that its authorities know or ought to know of circumstances particular to his case giving rise to his fear, but are unlikely to provide the additional protection his particular circumstances reasonably require; Osman.

Article 3 claims

7) The same principles apply to claims in removal cases of risk of exposure to Article 3 ill-treatment in the receiving state, and are, in general, unaffected by the approach of the Strasbourg Court in Soering; which, on its facts, was, not only a state-agency case at the highest institutional level, but also an unusual and exceptional case on its facts; Dhima, Krepel [2002] EWCA Civ 1265 and Ullah [2004] UKHL 26.

8) The basis of an article 3 entitlement in a removal case is that the claimant, if sent to the country in question, would be at risk there of Article 3 ill-treatment.

9) In most, if not all, Article 3 cases in this context the concept of risk has the same or closely similar meaning to that in the Refugee Convention of a 'well-founded fear of persecution', save that it is confined to a risk of Article 3 forms of ill-treatment and is not restricted to conduct with any particular motivation or by reference to the conduct of the claimant; Dhima, Krepel, Chahal v UK [1996] 23 EHRR 413.

10) The threshold of risk required to engage Article 3 depends on the circumstances of each case, including the magnitude of the risk, the nature and severity of the ill-treatment risked and whether the risk emanates from a state agency or non-state actor; Horvath.

11) In most, but not necessarily all, cases of ill-treatment which, but for state protection, would engage Article 3, a risk of such ill-treatment will be more readily established in state-agency cases than in non-state actor cases – there is a spectrum of circumstances giving rise to such risk spanning the two categories, ranging from breach of a duty by the state of a negative duty not to inflict Article 3 ill-treatment to a breach of a duty to take positive protective action against such ill-treatment by non-state actors; Svazas.

12) An assessment to the threshold of risk appropriate in the circumstances to engage Article 3 necessarily involves an assessment of the sufficiency of state protection to meet the threat of which there is such a risk – one cannot be considered without the other whether or not the exercise is regarded as 'holistic' or to be conducted in two stages; Dhima, Krepel, Svazas [2002] EWCA Civ 74.

13) Sufficiency of state protection is not a guarantee of protection from Article 3 ill-treatment any more than it is a guarantee of protection from an otherwise well-founded fear of persecution in asylum cases – nor, if and to the extent that there is any difference, is it eradication or removal of risk of exposure to Article 3 ill-treatment'; Dhima, McPherson; Krepel.

14) Where the risk falls to be judged by the sufficiency of state protection, that sufficiency is judged, not according to whether it would eradicate the real risk of the relevant harm, but according to whether it is a reasonable provision in the circumstances; Osman.

15) Notwithstanding such systemic sufficiency of state protection in the receiving state, a claimant may still be able to establish an Article 3 claim if he can show that the authorities there know or ought to know of particular circumstances likely to expose him to risk of Article 3 ill-treatment; Osman.

16) The approach is the same whether the receiving country is or is not a party to the ECHR, but, in determining whether it would be contrary to Article 3 to remove a person to that country, our courts should decide the factual issue as to risk as if ECHR standards apply there – and the same applies to the certification process under section 115(1) and/or (2) of the 2002 Act”.

24. While it will always be relevant to ask whether or not there is in general a sufficiency of protection in a country, the critical question will nevertheless remain in an asylum case as set out in the sixth proposition by Auld LJ and in an Article 3 case as set out in the fifteenth proposition. Thus I must look, notwithstanding a general sufficiency of protection in a country, to the individual circumstances of the appellant and ask himself the above questions.
25. In reaching my findings, I have considered the evidence as a whole bearing in mind both the background evidence and Professor Joffé’s report in assessing the evidence of the appellant and the family members he called as witnesses.

Prof Joffé’s report

26. I accept Prof Joffé has given evidence previously in a number of Upper Tribunal cases. I have no reason to doubt his observations [30] to [32] that there is significant violence against women in Algeria, but the incidences cited at [32] while showing that violence against women in what is referred to as “honour” killing does occur, gives no indication of the frequency of this happening. It is relevant to note that in the incidences set out in detail in the sources identified at [32], the first perpetrator was arrested and put on trial; the perpetrator of five killings in Djelfa, according to the article cited, surrendered to police. The article also records that the girl and her boyfriend were given police protection. Prof. Joffé makes no mention of that, or that in the third case, the perpetrator was sentenced to life imprisonment. I consider that the articles do, however, show a willingness to detect and prosecute crimes (in the first article) and also to offer protection to the victims.
27. Prof. Joffé’s report also states at [34] that:
- [I]f family honour is slighted, women will not be the only victims. Men held responsible are also sought out and, if possible, killed. Such killings are relatively infrequent in Algeria because of the danger of initiating a blood-feud and, since the law makes no distinctions between different kinds of murder in terms of their causes, such crimes are often not identified as such.
28. While the report contains much that is relevant to violence and discrimination against women, there is little other evidence about attacks on men who may have been perceived to have transgressed against traditional mores. The report at [77] to [88] is entitled relocation and sufficiency of protection and it contains a detailed exposition

of the difficulties in relocation. The evidence at [85] relates to the inability of the state to guarantee personal security yet refers to the general level of violence as being low. There is, however, nothing in this section about the authorities' ability or willingness to protect those threatened with a revenge attack or the claim that the police could be influenced or infiltrated by the former girlfriend's family beyond the speculation at [87] that if they had connections with extremist groups, they might be able to determine the appellant's whereabouts.

29. Further, the observation at [88] that the police would not normally become involved in family disputes, cannot properly be extrapolated to or applied to this case. The reference to "family life" indicates that the scenarios in which the police will not interfere is what goes on within the family or the family home; that is, domestic violence and so on. What is alleged here goes well beyond that into the public sphere. It is claimed campaign of threats aimed at a particular individual. There is evidence at [34] and in the articles cited that the police do take action.

The witness evidence

30. In analysing the appellant's evidence, the starting point must be the preserved findings in respect of his parents. I accept that the appellant had a relationship with a girl which broke down, and that subsequently threats were made by her family. I accept that the reason for that is that the woman's family believed that the appellant had dishonoured her.
31. I do not, however, accept the appellant's evidence about how the family found out his address. His evidence is inconsistent. He first said that they learned of the address when he had stopped his car outside when the cousin was a passenger. Then said it must have been the cousin who betrayed the girlfriend. He then said that the family must have learned of the address after sending people around the area, having said that the building in question had 16 storeys, raising manifest doubts as to how the actual floor or apartment could have been identified.
32. There is then the evidence of the car crash involving his sisters and mother. While there is a significant amount of evidence from the Algerian police confirming that a crash took place, it is notable that the appellant was not consistent about whether the car was still registered in his name, stating that it was, yet the police reports and the associated documents show it was in his mother's name. Further, while it is now said by the appellant that two other cars were involved in an attempt to run "his" car off the road, that is not what is recorded by the police in the statements they took in the aftermath of the accident. The report to the public prosecutor by the police does, it is true, record that the other driver mentions that he was harassed by another vehicle, he blames that car for causing him to collide. On any view, however, the police appear to have investigated and passed a report to the public prosecutor for action to be taken. While it is now said by the sister in her affidavit at [7] that two cars were involved, this does not appear to be reflected in the police report.
33. The sister's evidence is based on suspicion; that is what she herself says at [8] and [9]. There is no proper basis for her belief that this was more than a traffic accident simply because it is going to court; it could just as easily be because the police believe the other

driver was guilty of a driving offence, and it is unclear why the sister says [9] that the car is the appellant's given the documentary evidence adduced to the contrary. The observation that they might not have known who was in the car due to tinted windows seems insubstantial given the accident took place about 10.30pm. Her evidence that the appellant said he thought that "Kabyle" group was responsible is at best evidence of what he said. It is not evidence that they are.

34. The report of Prof. Joffé does not assist in assessing the road accident. Viewing the evidence as a whole, and given the logistical difficulties in staging an accident in a very public place (a motorway), as well as the fact that the driver of one of the cars stopped and cooperated with the police, I am not satisfied even to the lower standard of proof that this anything more than an unfortunate accident. That the driver was a Kabyle, as it appears, is nothing more than coincidence.
35. I accept that the appellant's family have received threats and I accept that this have been referred to the police. I draw no conclusions from the fact that their investigations have not led to anything. It is, in the circumstances, difficult to know what they could do absent further evidence.
36. While I accept that Berbers and Kabyle Berbers in particular have, as is described, an identity as a minority group, there is insufficient evidence to show that they, or the family in question in this case, have sufficient evidence to influence the police or other authorities; indeed, if so, it would be inconsistent with the likely prosecution of the driver referred to by the appellant's sister in her affidavit.
37. Bearing that in mind, viewing the evidence as a whole, and considering in particular the evidence of Prof. Joffé, I conclude that there is in general a sufficiency of protection in Algeria against the sort of threats made here which I do not accept includes the accident. There is, contrary to what is averred in the skeleton argument, insufficient evidence to show that the police are unwilling to help, still less that they are unable to assist. There is, I find a systemic protection available within a functioning criminal justice system. Further, as noted at [26] above, there is positive evidence of the police being willing and able to investigate crimes such as those feared by the appellant.
38. The appellant has not properly identified any particular features of his case, of the type identified in Osman which would nonetheless put him at risk. He has not himself given a statement to the police, nor are there any particular features identified in the material that means that there would not be a sufficiency of protection for him.
39. Accordingly, I am not satisfied that the appellant has a well-founded fear of persecution on return to Algeria.
40. Further, and in the alternative, I do not accept that there is a risk that the applicant would be found elsewhere in Algeria. That the Berbers exist throughout the country does not mean that the Z family would be able to find the appellant through infiltration of the authorities or otherwise. Further, I am not satisfied, that the economic and other difficulties he might face are so severe that the appellant' situation elsewhere in Algeria would be such that he would be destitute, given that there is insufficient evidence to show his family would not be able to assist him,

41. Accordingly, I am not satisfied that the appellant is at risk on return to Algeria of serious harm such that his removal would be in breach of the United Kingdom's obligations under the Refugee Convention or Article 3 of the Human Rights Convention. Given that the other findings of the First-tier Tribunal are preserved, I remake the decision of the First-tier Tribunal by dismissing the appeal on all grounds.

Signed

Date: 5 June 2018

A handwritten signature in black ink, appearing to read 'Jeremy Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul