



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05788/2017

THE IMMIGRATION ACTS

Heard at Field House
On 1st August 2018

Decision & Reasons Promulgated
On 17th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

N K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Short, Counsel instructed by Duncan Lewis & Co Solicitors
For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Algeria, appeals to the First-tier Tribunal against a decision of the Secretary of State dated 6 June 2017 refusing his application for asylum in the UK. First-tier Tribunal Judge V A Cox dismissed the Appellant's appeal on asylum, humanitarian protection and human rights grounds. The Appellant's application for permission to appeal was refused by the First-tier Tribunal. His renewed application for permission to appeal was granted by Upper Tribunal Judge Bruce on 30th May 2018. Permission was granted on all grounds. Upper Tribunal Judge Bruce noted that it was particularly arguable that the First-tier Tribunal failed to have regard to the totality of the country background evidence when assessing future risk of unfair trial or harm in detention.

2. The background to this appeal is that the Appellant claims that he worked as a teacher in Algeria and was a trade union activist. He claimed that he was subjected to harassment by the police between 2003 and 2012 after he was reported as the strike leader to the police. He claims that on 16th August 2012 he was arrested and falsely accused of insulting the regime and threatening to kill policemen. He was beaten in detention and forced to sign a confession. He was sentenced to imprisonment on 14th October 2012 for one year and was fined. This sentence was subsequently reduced to six months. He appealed and proclaimed innocent on 4th March 2013. On 13th March 2013 he was informed that the prosecutor had appealed to the Supreme Court. He claims that he left Algeria on 3rd March 2015 using his own passport. He previously failed asylum in France in 2006 but returned to Algeria in September 2007. He claimed asylum in the UK on 20th March 2015.
3. In the reasons for refusal letter the Secretary of State accepted that the Appellant was a teacher and trade union activist, that he had been arrested and mistreated in detention, that he had been convicted in relation to charges of insulting officers and that the conviction had been overturned on appeal. The Secretary of State rejected the Appellant's claim that his arrest was politically motivated, that he was convicted for threatening officers, that the prosecutor has appealed against the decision of the Appeal Court or that there was any ongoing interest from the authorities.

Error of law

4. At the hearing Ms Short summarised and restructured the grounds by contending that the criticisms of the judge's decision related firstly to the judge's fact-finding and secondly to the judge's assessment of risk on return to Algeria.
5. In relation to the fact-finding, Ms Short contended that the judge's treatment of the Section 8 factors at paragraphs 40 to 45 of the decision is irrational and incomplete. She accepted that there had been a short delay in the Appellant claiming asylum and that the letter in the Respondent's bundle from the Refugee Council confirmed that the Appellant had sought advice from them on 13th March 2015 and that an asylum claim was made on 20th March 2015. She pointed out that the First-tier Tribunal Judge accepted that the Appellant had been robbed as claimed. Therefore, she contended, the judge's assessment that the short delay, for which an explanation had been put forward, damaged his credibility, meant that the judge's starting point was that the Appellant was not credible and that this infected the other findings.
6. I do not accept this submission. The judge is obliged to consider the factors set out in Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The judge found that the Appellant's failure to claim asylum on entry damaged his credibility. In so finding the judge took into account that the Appellant is a retired English teacher, that there is no language barrier, that he is educated, that he had previously claimed asylum in France and said that he had left Algeria to escape his problems there [41]. The judge did not accept the Appellant's claim that he feared being returned to Algeria from the airport [42]. The judge took into account that the Appellant told the Immigration Officer that he intended to come to the UK to claim asylum and that he would have claimed asylum if he had been stopped at the airport

[42]. The judge took into account the Appellant's subsequent actions in purchasing a SIM card, registering it and using it to telephone his son to tell him about his safe arrival [43]. The judge also took into account the Appellant's application for a visa without declaring his previous claim for asylum or his dealings with the Algerian criminal justice system [44]. The judge concluded at paragraph 45 that the Appellant's conduct was not that of a man fleeing persecution and arriving in the UK as a genuine refugee and that these factors must weigh against him in assessing his credibility. Whilst the judge accepted that the Appellant was robbed of his documents when his bag was stolen after he arrived in the UK, it is clear that the judge did not consider that this was an adequate explanation for the Appellant's failure to claim asylum at the airport on arrival. It was open to the judge to reach these conclusions in relation to the Section 8 issue. I do not accept the contention that these findings were determinative of the credibility issue or that these findings infected the rest of the judge's findings on credibility. This was the judge's starting point and the judge was entitled to reach these conclusions.

7. The judge went on to consider credibility issues in detail. Ms Short did not specifically challenge any of those credibility findings at the hearing. The judge listed a number of factors between paragraphs 55 and 85 which he considered undermined the Appellant's credibility as to the political motivation claimed behind the actions of the police. The judge noted at paragraph 55 that there is no suggestion that the prosecutor mentioned any political motivation profile or the union activities of the Appellant. The judge considered the circumstances of the checkpoint in 2012, finding at paragraph 56 that the event in 2012 is unconnected with the Appellant's activism. The judge accepted that the Appellant was mistreated in detention by police who "abused their power and assaulted him" [60]. The judge considered that the Appellant's credibility was damaged by his decision to plead guilty in court and that he was able to ventilate his concerns on appeal when his conviction was overturned. The judge considered that the background evidence shows that the legal process is fair [62].
8. The judge considered the absence of evidence from the Appellant's legal representatives in Algeria to be significant at paragraphs 63 to 64. In my view this finding was open to the judge who considered that such evidence would have been easily available and that its absence was striking [64]. The judge considered it inconsistent with his claim of political motivation that the Appellant was granted bail and allowed to leave court after being sentenced to a custodial sentence on the basis that he had a right of appeal [65-66]. The judge considered it not credible that the Appellant would have gone to the police station after these events to tell the police that he had 'forgiven and forgotten' [67-68].
9. The judge considered evidence from the Appellant's son but found that it was of little weight. The judge considered that the Appellant's inability to recall how often or when the authorities had started raiding his former family home or inconveniencing his son was not credible [74]. Ms Short submitted that, at paragraphs 74 and 75, where the judge criticised the Appellant's inability to remember details of the alleged harassment suffered by his family, the judge failed to consider the GP's letter at T1 of the Respondent's bundle in relation to the Appellant suffering PTSD. However, that letter does not refer to any impact on the Appellant's memory. In any event there was

no allegation that the Appellant was unable to remember other details in relation to his case. The judge also found at paragraph 76 that the Appellant had not provided detail and timings of alleged harassment of his family. The judge also noted that the fact that no such events or harassment took place whilst the Appellant was in the country whilst the appeal was pending from 10th March 2013 until 3rd March 2015 was further evidence that the Appellant was not of any political interest as he suggests [78]. The judge therefore rejected the Appellant's claim that there was any raid on his house or that his family was subject to harassment. These were findings open to the judge on the basis of the evidence.

10. The judge considered the expert report at paragraph 86 and acknowledged that the expert's assessment of risk was predicated on the Appellant being correct in his fears that there is a political motivation for the criminal charges [101]. The judge made clear that he did not accept that the Appellant had established that there was a political motivation for his arrest in 2012.
11. In my view the judge's credibility findings were open to him on the evidence and gave adequate reasons for those findings. Accordingly, the findings of fact made by the judge in this case were that the Appellant was a teacher who had been involved with the trade union and had been subject to arrest prior to 2012. He was arrested in August 2012 after being stopped at a roadblock which resulted in him being mistreated in detention and pleading guilty to subsequent charges. It appears that the conviction was overturned on appeal. The judge found that the Appellant had remained in the country while the appeal was pending for two years without any further action against him. The judge rejected the Appellant's claim that his family were harassed after he left. The judge found that the Appellant had been subject to a criminal prosecution as a result of an argument at a checkpoint and did not accept that it had been established that there had been any political motivation in relation to that charge.
12. Based on these findings I consider the second ground of appeal which contends that the judge erred in the assessment of risk to the Appellant in light of the country background evidence. Ms Short referred to paragraph 6.13 of the expert's report which states:-

"Making the link between [the Appellant's] involvement in an unofficial - and therefore generally ill-regarded - trade union of secondary school and technical college professors and specific action taken against him by the authorities is hard. There is little doubt that the authorities became increasingly concerned during 2012 and 2013 regarding the activities of CNAPEST which not only challenged the government and the Ministry of Education by their very existence, but also embarked in October 2013 on an unofficial strike prompted by the dismissal of one of their members but also seeking better pay and conditions."

13. However, I note from paragraph 101 of the decision that the judge was aware that the expert was clear as to the assessment of risk as set out at 4.12 in the report:-

"In my opinion, he is likely to be at risk on return of being arrested and detained for the felony identified in the court papers at the least. If he is correct in his fears

- that the proceedings against him have been politically motivated all along - then there may well be a real (sic) to him of serious harm."

The judge noted that this should read "real risk". The judge was clear in his findings that the Appellant had not established that there was a political motivation and accordingly this affected the weight given to the expert report. This was open to the judge on the basis of the findings made. Ms Short accepted that the judge was not bound by the expert report but submitted that it should have been taken into account in considering whether there was a link between what happened to the Appellant and any risk on return. However, this is exactly what the judge did.

14. Ms Short submitted that the judge had failed to take account of the Appellant's answers in his SEF interview where at question 80 he was asked whether he was officially arrested and he answered that whilst he was being tortured he was asked how he dared oppose the police and at question 81 when he was asked whether during his detention his trade union role had been mentioned and he said yes it had been insinuated. She contended that the judge had failed to take this evidence into account. However, it is clear from the judge's extensive examination of the evidence that he took into account all of the evidence in the round and looked at the circumstances around the criminal process before concluding that it had not been established that there was a political motivation to the arrest in 2012.
15. Ms Short submitted that the judge had failed to take into account that past persecution is a strong indicator of future persecution. In her submission the judge failed to consider that the Appellant had been tortured when arrested at paragraphs 90 and 102. However, the judge accepted at paragraph 60 that the Appellant was mistreated in detention by the police who abused their power and assaulted him. The judge however considered all of the evidence in relation to the prosecution and did not accept that there was a political motivation and accordingly did not accept that past persecution in this case was an indicator of future risk of persecution in this case.
16. Ms Short referred to paragraph 3 (b) of the grounds and submitted that the judge had failed to assess the fairness of the judicial process in light of the finding that the Appellant had made a false confession after being subjected to torture. However, this is exactly what the judge did in looking at the overall circumstances and in particular the fact that the Appellant was released on bail while his appeal was pending and, although he was initially convicted, the conviction was overturned on appeal. The judge looked at objective evidence at paragraph 87 noting background evidence indicating that in 2010 prison terms for fifteen teachers imposed in January for similar offences were discharged on appeal. The judge found at paragraph 91 that the prison conditions in Algeria do not fall below international standards. The judge found at paragraph 90 that the Appellant has been convicted of a criminal matter. The judge found that the Appellant had not shown that he was identified as a result of his political opinion whether imputed or otherwise.
17. Ms Short accepted that there is a functioning judicial system and fair trial in Algeria, however she referred to paragraph 9.2.1 and 9.2.4 of the Home Office Country Policy and Information Note of August 2017 and submitted that there is a real risk here of an

unfair trial. However, this submission is not borne out by the evidence or the findings by the judge.

18. In my view the judge has given adequate reasons for finding that the Appellant is not at risk on return.

Notice of Decision

There is no material error of law in the decision of the First-tier Tribunal.

The decision of the First-tier Tribunal shall stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 9th August 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

There is no fee payable and therefore there can be no fee award.

Signed

Date: 9th August 2018

Deputy Upper Tribunal Judge Grimes