



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06536/2018

THE IMMIGRATION ACTS

Heard at: Royal Courts of Justice
On: 10th September 2018

Decision and Reason Promulgated
On: 13th September 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

And

LT (Algeria)
(anonymity direction made)

Respondent

For the Appellant: Mr Melvin, Senior Home Office Presenting Officer
For the Respondent: Ms Radford, Counsel instructed by direct access

DECISION AND REASONS

1. The Respondent is a national of Algeria born in 1986. On the 23rd July 2018 the First-tier Tribunal (Judge Woolf) allowed his appeal on both protection and human rights grounds. The Secretary of State for the Home Department seeks to deport the Respondent, and now has permission to appeal against the First-tier Tribunal decision.

Anonymity

2. This case concerns a claim for international protection. I have had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders and I consider it appropriate to make an order in the following terms:

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

Background

3. The chronology of events, insofar as is relevant to this appeal, is as follows:

28 September 2010	LT's claimed arrival date in the United Kingdom. He claims to have entered the country clandestinely using a forged French passport obtained in Belgium
October 2010	LT arrested for possession of the forged French passport and sentenced to 10 months imprisonment
24 November 2010	LT claimed asylum on the grounds that he had come to the attention of the Algerian authorities because two of his brothers were involved in Islamist organisations in Algeria. He further asserted that he feared these groups, who wished to recruit him
20 December 2010	Asylum refused
28 April 2011	Asylum appeal dismissed by First-tier Tribunal Judge Jhirad
7 June 2011	Upper Tribunal refuses permission to appeal against First-tier Tribunal decision
24 March 2017	Anti-terrorism police attend the Appellant's address in Oxford in connection with an inquiry into an attack that took place at Brussels airport on in March 2016
22 September 2017	LT convicted of possession of a false identity document and sentenced to 11 months in prison

30 October 2017 LT asserts fear of return to Algeria on grounds that he is now wanted by the Algerian authorities in connection with the investigation into the Belgium attack. He places reliance on AF (terrorist suspects - HS (Algeria) confirmed) Algeria CG [2009] UKAIT 00023.

14 May 2018 The Secretary of State refuses protection

4. The Secretary of State refused to grant protection on the grounds that LF's claimed fear was baseless. The Secretary of State rejected his credibility as a witness and relied on the findings of Judge Jhirad in 2011 that the Appellant's claim was "hopeless".
5. When LT appealed to the First-tier Tribunal he did so without representation (I note that Ms Radford's involvement in this stage of the appellate process appears to be the first time that LT has ever had legal representation). He attended the hearing accompanied by two witnesses. A Mr Joseph Devlin testified that he was LT's landlord in Oxford, and that he had been present at the property at 6.30am on the 24th March 2017 when black-clad anti-terror police were conducting a search. LT was away at the time but police apprehended and arrested flatmates, two men named Ayoub and Hajj (transliterated elsewhere as Hadi or el-Hadi). An officer had told Mr Devlin that the raid was part of an investigation into a terrorist attack on an airport in Belgium. A second witness, Mr Vernicos, testified that he was LT's employer. Mr Vernicos told the Tribunal that he had been in Greece in August 2017 when he received a call from another employee telling him that the police had come to the restaurant and arrested LT. Mr Vernicos had subsequently spoken to an officer who explained that LT had been under surveillance for approximately three months and that he had been arrested in connection with false documents.

The First-tier Tribunal Decision

6. The First-tier Tribunal begins by noting that its starting point is the decision of Judge Jhirad. It directs itself to the principles in Devaseelan (second appeals – ECHR – extra-territorial effect)* Sri Lanka [2002] UKAIT 00702. The Tribunal finds no reason to depart from the conclusions reached by Judge Jhirad in 2011. At §35 the determination reads:

"I am not satisfied that the authorities in Algeria would make any connection between the appellant and any past terrorist activity on the part of family members nor am I satisfied that the appellant has come to the attention of the Algerian authorities or been detained or ill-treated by them before he came to the United Kingdom"

7. The Tribunal nevertheless goes on to find that LT has a currently well-founded fear of serious harm in Algeria. It accepts that the British police raided his Oxford home in March 2017 in connection with an anti-terror investigation. The police were led there because the man believed to have carried out the attack in Belgium was the brother of Ayoub, LT's flatmate. Ayoub was himself arrested. Ayoub, his brother and LT are all from the same neighbourhood in Algeria – their family homes are approximately one mile apart. The news of the attack, and the investigation into it, reached the neighbourhood. It became 'gossip' that the Appellant and Ayoub had been investigated by police: it is a place where everyone knows everyone and where news travels fast. LT's own family had heard about his arrest before he had even told them about it. In October 2017 LT received word that the Algerian police had questioned his brother about his whereabouts. The Tribunal found LT's evidence about the foregoing to be "plausible", "measured" and "genuine". It was supported to some degree by Mr Devlin's evidence that the police raid had been in connection to the Belgian attack. Applying the lower standard of proof the Tribunal accepted that the Algerian authorities were indeed looking for the LT. Applying to this finding the country guidance in AF (Algeria), the appeal was allowed.

The Appeal

8. The Secretary of State takes no issue with the application of AF (Algeria). Before me Mr Melvin accepted that if the core facts are made out – that the Algerian police have been looking for LT in connection with the Belgian attack – then LT would have made out a real risk of harm. The Secretary of State's complaint is, rather, that the findings of fact outlined at my paragraph 7 above were not open to the Tribunal on the evidence before it. In particular:
- i) The First-tier Tribunal had "not adequately factored in the very definitive negative credibility findings" made by Judge Jhirad to its assessment of the later evidence;
 - ii) The conclusion that the LT would be at risk is not adequately reasoned and is speculative.
9. The written grounds also challenged the Tribunal's decision to accept the evidence of Mr Devlin as to the police raid. This ground was not pursued by Mr Melvin who acknowledged that the HOPO before the First-tier Tribunal does not appear to have challenged Mr Devlin's account.

Discussion and Findings

10. I am unable to find that the First-tier Tribunal failed to have regard to the *Devaseelan* principles, or as the grounds put it, failed to "adequately factor in" the

negative credibility findings made by Judge Jhirad in 2011. The Tribunal repeatedly refers itself to those findings. It notes at paragraph 3 that the earlier appeal had been dismissed; at paragraph 6 it acknowledges that the Secretary of State's refusal of the present claim was based on those earlier findings; at paragraph 19 the determination records that the Tribunal put the negative findings to LT in his oral evidence; it directs itself to appropriate principle at 29; the principle is applied at 32-35. The clear conclusion reached is that the decision of Judge Jhirad about what might be called LT's "historical" claim, was correct and is upheld. The Secretary of State can have no complaint about that.

11. Nor can it be said that the Tribunal failed to have regard to the LT's conduct generally. As Mr Melvin points out, LT was not just a liar but a criminal, and this was plainly a factor to be weighed in the balance when the Tribunal made its evaluation of his evidence. Again, this is a matter that the determination repeatedly makes reference to [at 1, 3, 5, 14, 26, 27, 30].
12. Ultimately I am unable to find any legal misdirection on the part of the First-tier Tribunal because of the following key passages in the determination:

"It is often the case that an asylum claimant may tell a story which is in part truth and in part fiction. I have considered the contents of the past determination and the respondent's observation that the appellant's credibility was roundly rejected is an accurate one...."

[at 35]. And:

"I am satisfied that despite the appellant's previous conduct and credibility as found by the Tribunal in the determination issued in 2011 the new facts presented by the appellant as to what has occurred subsequent to that determination fall to be treated as credible to the lower standard...."

[at 41].

13. The Tribunal was clearly aware of the very substantial negative credibility findings weighing against LT. It further had regard to his criminality, at the fact that he had remained living and working in the United Kingdom unlawfully after he lost his appeal in 2011 [at 27]. In other words, it made its positive findings with its eyes open. It cannot be said that it failed to properly apply the *Devaseelan* principle.
14. The second limb of the Secretary of State's appeal is that the conclusion of risk was unduly speculative, and was not open to the Tribunal on the evidence before it. To some extent this submission was tied to the misconceived ground about whether Mr Devlin's evidence should have been accepted (see paragraph 7 of the grounds - quite properly not pursued by Mr Melvin in light of paragraph 26 of the determination). Absent that point, the Secretary of State's case lands back at square one: ground 8 reads "any suggestion that the Appellant would be of interest to the Algerian authorities is based on speculation and the Appellants own oral evidence that has proved to be unreliable in the past". The key finding

that led to the appeal being allowed was the Tribunal's acceptance that the Algerian police had been looking for LT, and its conclusion, on the lower standard of proof, was that this was in some way connected with the terror investigation. There being no other reason why the Algerian authorities might be looking for LT, I am unable to say that on the accepted facts that was a conclusion outwith the range of reasonable responses. Asylum cases will very often involve some degree of speculation: on the lower standard of proof, the Tribunal's conclusion was one open to it.

Decision

15. The decision of the First-tier Tribunal is upheld.
16. There is an order for anonymity.

Upper Tribunal Judge Bruce
11th September 2018