



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

Appeal Number: PA/02200/2018

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 11 October 2018**

**Decision & Reasons  
Promulgated  
On 6 February 2019**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**B F  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss N Loughran, Solicitor

For the Respondent: Mrs O'Brien, Senior Home Office Presenting Officer  
(11/10/18)

Mr M Mathews, Senior Home Office Presenting Officer  
(19/01/19)

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge David C Clapham SSC promulgated on 29 March 2018 dismissing his appeal against a decision of the respondent made on 30 January 2018 to refuse his claim for asylum and humanitarian protection.

2. The appellant's case is that he entered the military in Algeria, spending three years in military academy followed by a secondment for five and a half years to the police to train their officers and then being sent back to the military, the appellant retiring in 2007. His retirement pension was small and those who retired later, in 2011 onwards, were treated more favourably. This led to retired army officers in the same position as the appellant setting up a national coordination committee for retired military personnel who organise demonstrations to protest their position.
3. The appellant started to demonstrate in 2013 and he attended two major demonstrations on 18 April 2017 and one on 21 May 2017. He had also been involved in numerous smaller gatherings in other cities and that he was a coordinator, being a point of contact between regional coordinators and others.
4. Following his attendance at the first demonstration in 2017 the appellant received a threat over the telephone which he believed to be that of someone in a position of authority and he was told to stop his activities. After his attendance at the second large demonstration he received a second telephone threat. The third threat following on 11 July 2017 and that one involved a threat of harm to his wife and children. In light of that he and his family left Algeria, fled to the United Kingdom and claimed asylum.
5. The respondent did not accept the appellant's account of what had happened in Algeria nor did he accept that the appellant was a retired military officer.
6. The judge found, having heard evidence from the appellant and submissions from his representative, the respondent not being represented at the hearing, that:-
  - (1) the appellant was a retired military officer [27];
  - (2) he was even prepared to accept that the appellant may have been involved in an attempt to improve the pensions for military officers at [31];
  - (3) there was no adverse interest in him on the part of the Algerian authorities, it being more likely that they would have attempted to arrest him, rather than making threatening phone calls;
  - (4) if the appellant were genuinely of interest to the authorities he could not have left the country without difficulty;
  - (5) it would not have been difficult for the Authorities to locate the appellant as a retired military officer who was in receipt of a pension [33] or that his account is not therefore made out.
7. The appellant sought permission to appeal on the grounds that the judge had erred;

- (1) in failing to make a finding on a material matter which is whether he had coordinated and attended demonstrations in Algeria;
  - (2) in failing to consider the risk to those who demonstrate illegally or without permission in Algeria.
8. Miss Loughran submitted that there was no proper evidence on which the judge had made an assumption about the appellant being able to leave the country. She submitted further that there needed to be a clear finding about whether the appellant was organising demonstrations, given the evidence of what happened to people who were undertook such activities.
  9. Mrs O'Brien submitted that the judge had made clear findings as to the demonstration and the real issue was that the judge had found adequate and sustainable reasons that the appellant had not shown that he was at real risk. She drew attention to paragraph 34 of the refusal letter which clearly raised the issue of the appellant being able to leave the country.
  10. In response, Miss Loughran submitted that there was clear evidence that those who demonstrated were prosecuted, demonstrations being banned indefinitely in Algeria and that there was a well-founded risk to the appellant of serious harm.
  11. I am satisfied that the judge erred in not making findings whether the appellant had in fact coordinated demonstrations and or had attended them. As Judge Hollingworth noted when granting permission the judge should have set out a more detailed analysis in relation to the departure of the appellant and that a fuller analysis was required in relation to the issue of warrants.
  12. I consider that the judge did not properly explain by reference to evidence why he concluded that the appellant being able to leave the country was an indication that he was not being sought. Further, the judge appears not to have taken into account the detailed evidence given by the appellant in interview and in his witness statements as to why he believed the person who made the threats was in fact acting on behalf of the Government.
  13. It is dangerous to make assumptions about how the authorities in Algeria are likely to respond to demonstrations by former military officers who clearly, in the past, had been loyal to the state and who had suffered significant casualties in the campaigns against Islamist factions. It does not necessarily follow that they would respond to demonstrations by such individuals as they would respond to demonstrations by those politically opposed to the regime on religious or party-political grounds. It may well be that they wish to disrupt the activities of the demonstrators by means other than arrests.
  14. For these reasons, I am satisfied the decision of the First-tier Tribunal did involve the making of an error of law in that insufficient reasons were

given for the findings on key facts. The decision was therefore set aside and directions given for a further hearing.

15. The hearing was then adjourned for the appeal to be remade at a hearing which took place on 19 January 2019
16. The appellant gave evidence through an interpreter, adopting his first and second witness statements. When cross-examined, he said that he had retired in 2007; that in 2011 some of his fellow officers began to complain about their retirement conditions; that he became involved in 2013; and, had attended demonstrations from January 2013.
17. He said that he became a coordinator at the provincial level, there being only one in each province, his being Wahran (also known as Oran). He said there were also area national coordinators.
18. The appellant said that when he had started in 2013 they did not have a coordinator and that they may have had one previously. It is normally the previous coordinator who chose the new one.
19. The appellant said that there were gatherings prior to the demonstrations in April and May 2017, that about 600 or so people had attended the gatherings. He said most of the time the authorities prevented them from taking place and that the authorities had attended during the gathering and asked everyone to leave.
20. The appellant said he had made an application for a visit visa in March 2017 although not planning to use it until August 2017. He said that he had applied for it beforehand as the visa application procedure takes a long time and he had to apply early as in the summer applications take a while to go through the embassy. He said he had not applied for a British visa before but for the rest of Europe many times. He said it was general knowledge that it took time.
21. The appellant said he had not had any contact with people in the movement and that their complaints had not yet been resolved. He said that there continued to be demonstrations, gatherings and arrests. When asked how he knew this, he said the media does not allow free speech. It was put to him that there was evidence of demonstrations held by other organisations since he left Algeria and it was put to him that there was no evidence of demonstrations held by his group since 2017. He said they still exist and they demand their rights. He said that he knew that as the organisation does exist on the internet and on YouTube. He said that his life had been at risk and he did not know what evidence he needed to provide to the court. He said he decided to seek asylum two weeks before he came here and he received threats. He said that he still receives his pension.
22. Turning to the three threatening telephone calls, the appellant said that the caller was the same one for all three occasions, had not identified

themselves but that he knew that they were from intelligence forces. He said he did not tell anybody about the threats, not even anyone in the organisation.

23. The appellant said that two national coordinators and three members from different provinces and some demonstrators had been arrested. He said that these were arrested from different locations such as train stations and bus stations. These people had not been asked to attend the police station. He said these arrests had taken place during the preparation of the demonstrations which were then held in April and May 2017. He said a demonstration had been scheduled for July and between June and that time they had arrested many people and he knew he was going to be next which is why he came to the United Kingdom. He said they arrested the leaders and the coordinators to stop the demonstration from happening. It was put to him that he had not said this before and that he was exaggerating. He said he was not doing so. He said that the arrests had taken place in the capital and he lived 450 kilometres away. He said after that the arrests started he was 100% sure that if he stayed he was going to be arrested.
24. He accepted that the only person named as being arrested was Amar Hassani, the leader of the organisation. He said they could not hide the arrest of Amar Hassani, also known as Al Berri, as he is well-known and, as an MP was involved, he was exceptionally released.
25. He said that all the arrests had taken place and they had hidden the evidence which is how things worked in Algeria as it was not a democratic country.
26. Re-examined, the appellant said that he was no longer an active member of the movement and he did not want people to know that he was here which is why he had had no contact with them. He did not want them to know that he was seeking asylum. He considered that he had betrayed his country. He had then been a high-ranked officer, had a good life and had had no need to leave the country. He said he did so when he realised his life was at risk, leaving his house, his mother who is 79, all his belongings. He said his mother is very sick and dying now and he had been forced to leave for his own safety.
27. In response to my questions, the appellant said that communications between the coordinators were first via phone though that they also socialised together as former military officers and information was circulated by the national coordinators to him and passed on by phone and social media. The coordinators had helpers who informed the members by phone, information being passed by word of mouth. He said they also had some special pages on Facebook where they posted information but that although he had used Facebook when he was in Algeria he no longer did so. He said he was worried that they would know he was here and that he had claimed asylum and he did not want them to have any suspicion.

28. Asked how he knew that they had been arresting people that were not reported, he said it was well-known that if somebody disappears from the movement he is with the security forces. I asked if he thought that they may have just stopped being involved with the movement. He said that they were physically not there and when someone gets arrested they just deny it.
29. In further cross-examination the appellant said he still accesses Facebook but not the pages connected to the movement. He does not communicate with those people. He said that they had not posted crucial information on Facebook and discussing that in their meetings.
30. In submissions Mr Mathews submitted that there was now evidence that the organisation he had spoken of does exist but that the demonstrations were relatively small. There were three reports of the same meeting (Note to self: Check items 8 and 14) which showed at worst that teargas was used against the demonstration and several people were wounded. He submitted that although the leader was arrested and sent to prison for a year, there was nothing to show general risk to those involved or that anyone other than the leader had been arrested and convicted. There is no evidence that ordinary veterans were subjected to arrests or threats or that hundreds had been arrested.
31. Insofar as people had been arrested at the demonstrations they were all released the same day and that the US State Department Report indicated that there had been no disappearances in Algeria albeit that arbitrary arrest was common in Algeria. He submitted it was odd that there was no external confirmation of people disappearing and that the US State Department indicated that people have access to a lawyer when arrested.
32. Mr Mathews submitted there was nothing to show the continuing existence of the organisation since 2017 and despite it being said that they communicated via Facebook no evidence of this had been produced despite it being easy to provide. He submitted that the appellant's belief that the organisation continues is simply an assertion as he has had no contact with its organisers since he left.
33. Mr Mathews submitted that the claims to have been threatened are without substance but in any event there was no evidence to show that anyone other than the local leader was at risk of arrest and that he had exaggerated the events of 2017 significantly.
34. Mr Mathews submitted that the appellant's account of the threats was unreliable and that even had the threats occurred, this did not amount to persecution and there was no continuing risk.
35. Miss Loughran submitted that the evidence of the phone call threats was consistent with threats made to journalists and that it should be borne in mind that Algeria was a culture where the oppression of dissent of any sort was the norm. She accepted that there was no evidence outside the

evidence of the leader being arrested and what the appellant fears is extrajudicial ill-treatment.

36. In assessing the appellant's credibility and his claim as a whole, I have had regard to the entirety of the evidence put before me and before the First-tier Tribunal. I bear in mind the findings of fact made by the First-tier Tribunal.
37. In evaluating the evidence of what has occurred in Algeria I bear in mind the clear evidence that there are severe restrictions on the media and in what can be reported. The Algerian government takes significant steps to avoid NGOs and particularly international NGOs entering the country to undertake examinations of conditions in detention. It should also be borne in mind that in Algeria the culture of repression goes back over a considerable period and that there were disappearances during the struggle against the Islamic extremists which resulted in atrocities perpetrated by both sides - see in particular "Algeria 2017: the return of the "murderers"? Algeria-watch 11/06/2017 (inventory III page 11)
38. There is evidence from several sources that the organisation of which the appellant claimed to be a member, does exist. It is evident that from around 2011 a group of retired officers began to come together to raise concerns about the treatment they received in terms of pensions and other benefits compared to those who retired after them. This led to a number of gatherings and later demonstrations in April, May and (check this) July 2017. The leader of the organisation was arrested and sentenced to imprisonment for a year from September 2017.
39. The context of these demonstrations is set out in "Algeria 2017: the return of the "murderers"? Algeria-watch 11/06/2017 (inventory III page 11) is a behind the scenes conflict for power between different factions within the state.
40. The suppression of the demonstrations is entirely consistent with the background evidence regarding how the Algerian regime does not tolerate any demonstrations or dissent or challenge to its policies.
41. There is, however, little evidence of what has happened to ordinary members of the organisation. I remind myself that it is dangerous to assume that because an event is not reported that it did not happen. There may be many reasons why an event is not reported. In a country like Algeria where there are severe restrictions on the press and where social media are monitored, it is possible that not all arrests are reported. The absence of evidence does not of course prove that an event did not occur.
42. Turning to the appellant's own evidence, I consider that his account of how the movement was organised, being at a provincial level, makes sense. It does not run contrary to the background evidence and its combination of retired officers who socialise together and discuss matters together with

messages passed on by telephone and limited information passed on Facebook pages makes sense. It is also evident from the background material that Facebook is used to coordinate certain activities in Algeria. It has also led to arrests (see US State Department Report at Inventory III, page 32).

43. It is striking that none of the accounts of the demonstrations or gatherings indicate that there were widespread arrests. There was a degree of violence and the demonstrations were brought to an end partly by the use of teargas but it is difficult to characterise what is described as excessive violence. Similarly, there is no evidence to support the appellant's account of a large number of disappearances. It may well be that the appellant was exaggerating at this point but equally I bear in mind that in a country like Algeria where the state has used coercion in the past and where in the recent past there have been disappearances, it is perhaps very easy to attribute someone no longer participating in a movement or disappearing from view as being abducted or arrested by the state. One has only to think how his former colleagues would consider what had happened to the appellant given that he has effectively disappeared from Algeria and has stayed out of contact with them.
44. There is only the appellant's evidence for the threats being made to him by telephone. There is a pattern in the background material of threats being made in an attempt to silence people.
45. I do not consider that the use of this sort of threat is inconsistent with an approach whereby demonstrations were broken up. It is just as effective to intimidate the coordinators into making sure that demonstrations do not take place and to disrupt the network. There is no reason why an experienced state apparatus should choose only one means to prevent protests and one might have thought that in Algeria, where the state has in the past treated dissenters and in particular Islamic fundamentalists, the threats against an individual and family may well be particularly effective. In assessing who made the threats, it is difficult to see that, if they did exist, they were made by somebody other than the state.
46. There is, however, little evidence of the movement continuing after 2017. There is some indication that demonstrating about pensions has become involved with a wider group of protestors organised by the trade unions – see “Algeria: Global unions condemns detention of 1,000 protestors” page2, Inventory III.
47. It is, however, of note that the appellant has provided no evidence of continuing activity despite the fact that he may have access via Facebook to the pages relating to the organisation. The explanation given – that he was in effect ashamed of having left his country and being seen as betraying it through seeking asylum and that this would be known – has a ring of truth about it. The appellant became emotional about this when giving evidence and I have no doubt as to his sincerity on this point. But there is nonetheless a lack of evidence of continuing activity.



48. Taking all of these facts into account and viewing the evidence as a whole, I found the appellant to be a credible and reliable witness notwithstanding a few doubts arising from a limited exaggeration. I make the following findings of fact:-
- (1) the applicant was involved in the movement of veterans from 2013;
  - (2) that he was the provincial coordinator for the Wahran/Oran province;
  - (3) that he participated in the demonstrations as claimed;
  - (4) that he received the threats to him and his family, the authorities seeking to disrupt the movement.
49. I draw no inferences from the manner in which the appellant was able to leave the country without hindrance; and that was a matter upon which Mr Mathews expressly no longer sought to rely.
50. Given the effect on the appellant from the threats to him and his family, which were sustained over a period, I am satisfied that although no physical harm was inflicted, the mental effect was, as he has described, sufficiently serious to constitute persecution in the past.
51. I now turn to assessing the risk on return. The appellant will be returning on his own passport albeit after an extended absence. That, and the fact that he had overstayed a British visa, would be readily apparent to anybody considering the passport. But there is no indication that the appellant is on a watchlist or would be arrested on the point of arrival. It is also difficult to gauge whether the state would maintain any interest in him given that from their point of view, the threats made to him to stop his activities had worked.
52. The appellant was asked in interview (Q.77) why he would be of continuing interest. He replied that in their view they would know that he would be involved with the organisation secretly. He was not, however, able to say if the authorities had been looking for him, but he thought that by the way they operate, they would actually be looking for him.
53. I accept that the appellant has a very real subjective fear of serious ill-treatment on return to Algeria and I note the evidence that detention conditions breach Article 3 but that does not answer the question of whether he is likely to be arrested and ill-treated on return. It is evident that the authorities maintained sufficient interest in him to make threats to him to desist from his activities and it is not likely that they did not notice in the circumstances his disappearance from the country or at the very least him ceasing to be involved with the movement.
54. That said, I bear in mind paragraph 339K of the Immigration Rules:
- 339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the

person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

55. Although it is difficult to quantify the risk, particularly with a state such as Algeria which tends to behave to an extent arbitrarily, but viewing the evidence as a whole and bearing in mind that the threshold of reasonable likelihood is low, I am persuaded that there is a risk that the appellant faces, in the particular circumstances of his case, persecution either through threats, or through detention and consequent ill-treatment. I am satisfied that that would be of sufficient severity to engage both the Refugee Convention and Article 3 of the Human Rights Convention and it would be on account of his perceived political opinion. Accordingly, for these reasons, I am satisfied that removing the appellant to Algeria would be in breach of the United Kingdom's obligations pursuant to both the Refugee Convention and Article 3 of the Human Rights Convention.
56. In the circumstances and as the issue has been conceded by Miss Loughran, it is unnecessary for me to consider Article 8.

### **Summary of Conclusions**

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- (2) I remake the decision by allowing the appeal on asylum and human rights grounds.
- (3) I formally dismiss the appeal on humanitarian protection grounds as the appellant qualifies as a refugee.

### **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 their 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 4 February 2019



Upper Tribunal Judge Rintoul