



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/14197/2017

THE IMMIGRATION ACTS

Heard at Field House
On 26 November 2021

Decision sent to parties on
On 13 December 2021

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

S M (ALGERIA)
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the claimant: Mr Stephen Walker, a Senior Home Office Presenting Officer
For the Respondent: Mr Pierre Georget, instructed by Duncan Lewis & Co Solicitors
(Sackville House London)

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of S M who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

1. The Secretary of State challenges with permission the decision of First-tier Judge Scott-Baker allowing the claimant's appeal against her refusal to grant him leave to remain on asylum, humanitarian protection or human rights grounds.
2. I remind myself of the narrowness of the circumstances in which it is permitted for the Upper Tribunal to interfere with a finding of fact by a First-tier Judge who has heard the parties give oral evidence, see *AA Nigeria v Secretary of State for the Home Department* [2020] EWCA Civ 1296 and *R Iran and Others v Secretary of State for the Home Department* [2005] EWCA Civ 982 at 90 in the judgment of Lord Justice Brooke with whom Lord Justices Chadwick and Lord Justice Maurice Kay agreed. The principles are well-known and I will not trouble to rehearse them here.
3. The First-tier Judge accepted that the claimant he had returned to Algeria for his father's funeral and on two other occasions, when he met family members still living there, and that he has Facebook friends who are still living in Algeria. The judge concluded that it was possible that the claimant might be able to rekindle contact with his family members.
4. The core of the First-tier Judge's reasoning is at [233]-[239] of the decision. At [233] she found that the claimant was socially and culturally integrated in the United Kingdom, in that he has two ex-partners and three daughters who are British citizens; he attends the Finsbury Park Mosque, has an uncle in Hounslow, and so on. At [236 ff], the judge said this:

"236. Absent the [claimant's] mental health difficulties I consider that the [claimant] could be enough of an insider and would be able to integrate on return to Algeria. However the evidence shows that he has difficulties here in integration and return to a country where he does not wish to be will cause a deterioration in his mental health. Dr Reddy stated in his addendum report that the level of his illness affected both his ability to undertake standard jobs as well as attending to his personal care and that this was further affected by his educational level. There are therefore clear issues as to whether the [claimant] would be able to find employment. In these circumstances it is also far from clear as to whether his estranged family would be able or with his mental health issues would wish to support him. If he could not rely on his family then without work the risk of destitution cannot be discounted.

237. Dr Reddy considers that if the [claimant] had to return to Algeria there was a high possibility that suicide would be considered. The fact that he had not been able to access secondary psychiatric services in the UK meant that he had little psychological support and those factors clearly place him as a vulnerable individual. The risk assessment of May 2020 stated that he was at risk of self-harming behaviour and death from suicide.

238. I accept that his vulnerability can be managed in the UK but this is an ongoing state for the [claimant] and his vulnerability will increase on return to Algeria. I consider that his medical conditions indicate that he will not be able to easily to integrate in Algeria as indeed he has shown on occasion in the UK. The findings

in *Kamara* provide that an individual needs to have a capacity to participate in society and to have a reasonable opportunity of being accepted. I consider however that the untreated schizophrenia acts as a bar to these conditions being satisfied.

239. This is not a case where the [claimant] is stating that he cannot be removed because of his medical treatment in the UK. It is a case where removal for this [claimant] could have extremely serious consequences as there would be no formal support network available to him to manage his unpredictable behaviour nor would there be the protective support of LR and his children. As was stated in the risk assessment the [claimant] is at risk of self-harm and the psychiatric reports confirm that his mental health will deteriorate on return and he will not be able to integrate to the extent that I consider there are very significant obstacles to his integration. I note the comments of the psychiatrist in his report and the history of the [claimant] and that attempts at suicide had been made by the [claimant] when he has been under pressure.
240. Drawing these findings together I find that as the [claimant] can satisfy the requirements of exception 1 under Section 117C(3) the public interest does not require the [claimant's] deportation. There is therefore no requirement for the [claimant] to prove that there are very compelling circumstances".

On that basis the judge allowed the appeal. The Secretary of State appealed to the Upper Tribunal.

5. Permission to appeal was granted in the following terms:
- “2. The grounds seeking permission assert that the judge erred in failing to make adequate findings on material matters. Specifically it is said that she erred in concluding that the [claimant] was socially and culturally integrated in the UK and that there would be very significant obstacles to his integration in Algeria and that he was at risk of destitution.
 3. The judge’s findings begin at paragraph 178 of her decision. Whilst, arguably, it was open to her to find that the [claimant] is socially and culturally integrated in the UK, it is similarly arguable that she erred in concluding that his untreated schizophrenia was a bar to his integration in Algeria. Arguably she failed to consider the availability of treatment in that country. It is also arguable that she engaged in speculation that his family in Algeria would not offer any support and that he was at risk of destitution.
 4. In those circumstances there is an arguable error of law and permission to appeal is granted” says First-tier Tribunal Judge Fisher”.
6. I remind myself of the narrow circumstances in which it is appropriate for the Upper Tribunal to interfere with a finding of fact by a First-tier Judge: see *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296 and *R (Iran) & Others v Secretary of State for the Home Department* [2005] EWCA Civ 982 at [90] in the judgment of Lord Justice Brooke, with whom Lord Justice Chadwick and Lord Justice Maurice Kay agreed.

7. The First-tier Judge's findings of fact in this appeal were unarguably open to her on the evidence before her. The Secretary of State's challenges are no more than a disagreement with findings of fact with which it is not appropriate for this Tribunal to interfere, whether or not this Tribunal would have reached the same conclusions.
8. Accordingly I uphold the decision of the First-tier Tribunal and the appeal of the Secretary of State is dismissed.

DECISION

9. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson

Date: 6 December 2021