



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

Appeal Number: PA/02291/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 6th May 2022**

**Decision & Reasons Promulgated
On 22nd June 2022**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**KK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No legal representative and no attendance by appellant but on written authorisation Mr J T attended as a quasi-McKenzie friend with an assistance from Mr R Miles (Barrister)

For the Respondent: Ms S Ahmed

DECISION AND REASONS

1. The appellant was born on 17th August 1994 and is a national of Algeria and claimed asylum following a decision to make a deportation order on 24th July 2019. On 21st February 2020 the respondent refused the appellant's claim that he was entitled to refugee protection status because he was a gay man from Algeria. The appellant's human rights claim was also refused.

2. The appellant asserted that he was gay and had been in a same-sex relationship for some time. Although the respondent initially resisted the appellant's claim that he was gay it was accepted that he was indeed gay and openly gay by the date of the error of law challenge. Following challenge by the Secretary of State, the error of law decision dated 14th October 2021 set aside the First-tier Tribunal judge's decision allowing the appeal on asylum and human rights grounds together with the findings that the appellant would be persecuted as an openly gay man if he were returned to Algeria. It was noted that the burden of proof rested with the appellant to show that there was a reasonable likelihood or serious possibility on return of persecution because of membership of a social group. The matter was retained in the Upper Tribunal for a resumed hearing.
3. The appellant failed to attend the resumed hearing on 14th February 2022 and on the eve of the hearing the appellant advised he was unwell and unable to attend and thought it too late for an adjournment. He also submitted an email attachment upon which he wished to rely in relation to his family in Algeria and references to documentation. In the interests of justice that documentation was admitted and although the reference to the adjournment was ambiguous, for fairness, the matter was adjourned bearing in mind that it was clear that there were issues on which the respondent wished to cross-examine the appellant. It was specified in a direction at 4(iv) of the directions that the appellant was to produce medical evidence to support his assertion that he was unwell and unfit to attend the court on 14th February 2022.
4. At the resumed hearing on 6th May 2022 JT, the appellant's said partner, supported by Mr R Miles (barrister, although he stated he was not acting in Counsel's capacity) attended to assist him. The appellant did not attend and no documentation in relation to the appellant's production of medical evidence supporting his absence from the previous hearing was produced. I make no criticism of JT in this regard but note that the appellant failed to provide evidence of even an effort to contact the GP to provide medical evidence.
5. JT stated that the appellant was unwell and had a panic attack and was unable to attend. He wished to make a contribution to the appellant's appeal and also wished to give evidence. I explained to him that the weight to be given to his evidence may be affected by the fact that he was also making representations but nonetheless he proceeded to give evidence.
6. JT had provided on behalf of the appellant documentation which included a report from the Human Dignity Trust on Algeria (undated but appeared to report to 2020), a report Homosexuals in Algeria: From Self-Hating to Sexual Apartheid dated 18th December 2017, a report entitled Algeria: Mass convictions for homosexuality from Human Rights Without Frontiers dated 21st October 2020, and a report from the House of Commons Library

entitled LGBT+ rights and issues in North Africa dated 21st December 2021.

7. At the hearing I provided both the Home Office and JT, as he produced an authority from the appellant confirming that he wished JT to make a contribution in his appeal, a copy of the appellant's bundle before the First-tier Tribunal. I confirmed to JT that the Home Office bundle had been forwarded to the appellant on a number of occasions as the appeal had been adjourned.
8. JT confirmed that he was a psychotherapist but had not produced evidence of the same. There was no medical evidence showing the appellant was in a "deeply traumatised state" as claimed. He confirmed to the Tribunal that the appellant had had mental health issues since he was an adolescent. He stated that it was in the middle of the pandemic the appellant was unable to obtain medical evidence that he was unable to attend on the last occasion. He had also stated that the appellant did not even apply for an adjournment. There was no evidence of efforts made by the appellant to obtain medical evidence. The only medical evidence was a letter of an appointment with the Royal Free in terms of the appellant's eyesight. Save for that he confirmed there was no evidence that the appellant was as he asserted partially blind and had learning difficulties. The letter from the Royal Free was dated 17th November 2021 and merely related to an appointment.
9. JT was asked about the status of his relationship and the fact that in his statement he stated at paragraph 20 that "a few months ago we broke up" and at the November 2020 hearing before the First-tier Tribunal he had stated he was not in a relationship. JT advanced that they had a "tempestuous relationship". He stated that they had a "loving" relationship and had sex with each other and were committed to each other and in comparison with other couples he would say that they were in a relationship. When it was put to JT that the appellant did not say that referring to him denying a relationship, he stated, "sometimes he says that" and that sometimes he said that they were in a relationship and sometimes that they were not and that was very frustrating. When it was put to him that it was frustrating because he thought they were committed but the appellant did not, he replied 'yes' but qualified that with that he worked on the assumption that he, the appellant, was spending so much time on apps on his phone and that he was cruising but having spoken to other friends in his age group that was common amongst many gay men. Sometimes the appellant told him he did not care but he did care passionately. He agreed that although he did say he did not consider himself in a relationship the appellant the vast majority of the time thought he was in a relationship with him.
10. It was put to the witness as to why, if the appellant cared about his relationship that he did not attend court.

11. JT confirmed that he himself had a blue badge and was considered to be disabled and referred to the witness statements referred to his disability. Although there was no objective medical evidence. The witness confirmed that he had a care package and employed privately a care worker, in addition to the contribution that the appellant made, and the care worker came in once a week. JT had psoriatic arthritis since he was young. He was estranged from his family but had many good friends, but he considered that if the appellant was deported, he would be unable to substitute the contribution he made to his care package. He helped with everything from getting up in the morning to what he ate.
12. It was pointed out that there was no evidence of his care needs.
13. He stated that the appellant had very violent telephone conversations with his sister, with lots of shouting and screaming and upset. Those conversations were in French and or Arabic. He did not speak French and had little Arabic. It was put to him that before the Tribunal made its decision the appellant was not in contact with anyone in Algeria and the witness responded that he was responsible for encouraging the appellant to make contact with people in Algeria because living in the UK he was isolated and encouraged him to try and find distant family in Algeria.
14. It was put to him that the appellant now knew that the country guidance and legal position was that he may be at risk from family members and that the appellant had in effect changed his account and he was now saying that he had located his sister so he could show the Tribunal that his family knew he was gay and would be at risk. That was considered by the witness to be an awful statement to have been made by the Home Office.
15. The witness was asked how he found his sister and he stated it was through a former neighbour in Algeria and he had seen her on FaceTime and initially she was quite friendly and then the sister had become hostile and abusive. The appellant was not at court to describe any of this and there was no evidence of any relationship.
16. The Home Office stated that there was no detail on how he located his sister, particularly when it was his previous evidence that he did not know where she was but the witness, JT, responded that there was no practical way that he or the appellant could provide this, because they had no technical skills. The witness could not give a response, however, to state that he did now know, when he was asked whether he accepted there was no detail provided in the statement of how the appellant located his sister.
17. In terms of his criminal convictions he confirmed that the appellant had been duped and he thought he did not have an interpreter, albeit that it was pointed out to the witness that the appellant had in fact been convicted serially in 2017, 2018 and 2019 of various offences of theft which involved taking money and computers and phones in bars and restaurants. The witness, JT, confirmed that he managed his care needs

alone and with help whilst the appellant was in detention for approximately nine months after his conviction in 2019.

18. In her submissions Ms Ahmed invited the Tribunal to draw adverse inferences from the non-attendance of the appellant and it was likely that he had chosen not to attend as he just simply did not wish to answer questions and not because he was unwell. There had been no compliance with the last direction given to the appellant and there should be no weight attached to his evidence which was wholly incredible. His evidence was inconsistent and he had sought to depart from his initial account which he had consistently maintained, which was that he had no contact with his family in Algeria and he did not know where they were and I was referred to his witness statement and his page 52 of the respondent's bundle at question 10 where he said in terms of his family in Algeria "I have nobody". When asked what happened to his sister, he stated he did not know and he did not have any idea where she was, he had not talked to her. Following the error of law decision there was now received an updated written email, but the submission was that the appellant now says his sister had been contacted and he had told her that he was gay whereas before he had stated that he had informed no one of that in Algeria. His claim was manufactured.
19. There was a disagreement with the witness and the appellant as to whether they were in a relationship or not, and there was a contradiction in the evidence and in the statements of what was said at the First-tier Tribunal hearing. Given the discrepancies the appellant's credibility was seriously damaged. I was referred to **OO (Gay Men) Algeria CG [2016] UKUT 00065 (IAC)** and the headnote which was confirmed by **YD (Algeria) [2020] EWCA Civ 1683** which found that the Upper Tribunal had correctly evaluated the forms of harm. It was entitled to find on the evidence that, outside the family, a gay man in Algeria would not face a real risk of persecution. The fact that the Appellant would not live openly as a gay man if he returned because of social, cultural and religious norms in Algeria did not amount to persecution. Nor would it be unduly harsh on the facts of that case for the appellant to relocate within Algeria to avoid the risk of ill-treatment at the hands of his family. The Upper Tribunal was entitled to find that there were no significant obstacles to his reintegration into Algeria.
20. There were no significant obstacles to the appellant's return to Algeria and he could not fulfil the exceptions in Section 117C. He had not been lawfully resident for most of his life in Algeria and was not socially and culturally integrated which was scored by his offending, see **CI (Nigeria)**.
21. There was no evidence that he was partially blind with SEN and no other medical evidence of his mental health condition. JT had confirmed that he had long had mental health issues since adolescence. There were discrepancies about what was said before the First-tier Tribunal in his statement about the relationship and there was oral evidence about JT's medical condition, statements from friends but no evidence of what care

needs he had. JT was a British citizen and employed a care worker and the support he was referring to an emotional type of support. He managed while the appellant was detained and managed before he met the appellant. He had friends in the UK and also managed with their assistance.

22. She submitted that the CPIN and referred to by JT merely reflected what was said in **OO (Algeria)**.
23. JT agreed that the statements made about their relationship were valid at the time. Before modern technology there were airmail letters and before they had smart phones, but he was unable to contact his sister. This was plausible because of the change in modern technology. He came out to his sister because JT wanted him to be honest and open. His previous partner had been a devout Roman Catholic and his mother of his previous partner wanted him to find a bride and this was the same with the appellant. Coming out as a gay person was not an instant thing but a process and part of that process was coming out to his sister. Neither he nor the appellant had technical knowledge to provide evidence. He accepted that they argue but they made up and it was the fact that they did not have identical stories that indicated that what they were saying was true. He feared that the appellant could not integrate because he was partially sighted and had gained no specific usable skills as an adult and no transferrable skills should he go back into Algerian society. There were mass arrests and abuse of LGBTQ people in Algeria and going back would kill him and he would face destitution.

Analysis

24. The appellant on 16th July 2010 claimed asylum as a minor at the Asylum Screening Unit and was granted temporary admission and claimed at his interview to have previously entered the United Kingdom clandestinely by lorry in 2010. He absconded and did not attend his asylum interview in August 2010 and his asylum claim was treated as withdrawn. He was encountered in 2011 but again stopped reporting in 2017. On 30th November 2018 he was convicted of theft and given a conditional discharge for three years. On 10th July 2019 he was again convicted of theft and subsequently given eighteen months' imprisonment. On 24th July 2019 he was served with a notice of decision to deport. On 7th August 2019 he made representations on protection and human rights grounds on the basis that he was gay and at risk should he return to Algeria.
25. On 24th July 2019 the appellant was interviewed and claimed he should be allowed to stay because of his sexuality and identified his partner as JT. In response to questioning at section 2.1 when asked whether he had any medical conditions or disabilities he stated no. He also confirmed that he was not taking any medication and he confirmed that he was able to be interviewed. He was again interviewed on 19th January 2020 and confirmed that he was feeling fit and well and that he understood all of the questions.

26. The appellant's resumed hearing on 14th February 2022 was adjourned because he did not attend. At the hearing before me on 6th May 2022, JT submitted that the appellant himself did not make an application for an adjournment but stated, as recorded in the adjournment notice at paragraph 1, that he was unwell and was unable to attend and thought it too late for an adjournment.
27. The matter was indeed adjourned on 14th February 2022 and a direction was made that, by the date of the relisted hearing, the appellant was to produce medical evidence to support his assertion that he was unwell and unfit to attend court on 14th February 2022. No such response was made to that direction and indeed again at the resumed hearing the appellant failed to attend.
28. I am not minded to treat the appellant as a vulnerable witness. First he did not attend to give his evidence, and secondly despite a direction to the effect that he must produce medical evidence he produced neither evidence in relation to the hearing in February nor for the resumed hearing. He did not produce even a letter showing he had attempted to obtain such evidence. JT, his claimed partner, attended the hearing stating that he had been a journalist and psychotherapist and that the appellant had on the day of the hearing a panic attack and he thought it most unlikely that he would attend any future hearing.
29. I proceeded with the hearing in the light of the overriding objective with the principle of fairness in mind. The appeal hearing had already been adjourned once, there appeared no prospect that the appellant would attend, despite obviously knowing of the hearing, and I was not persuaded on the evidence before me that the appellant was indeed ill. He had submitted a written statement by email and an attachment dated 13th February 2022 and although the attachment was not signed and appeared to have been written by JT, I took this into account. That communication, specifically the attachment, appeared to have been written by JT. JT was prepared to give evidence on behalf of the appellant but also wished to make a contribution (submissions) as indicated in the email of the appellant written in February 2022. JT was accompanied in court by a barrister, namely Mr Richard Miles, who confirmed that he was not instructed and wished to assist the witness. Ms Ahmed indicated that she thought this was a most unsatisfactory situation and I explained to the witness that he may give evidence but that he was making representations on behalf of the appellant may affect the weight to be given to his evidence.
30. After some preliminary discussion about documentation, Mr Miles was invited to sit at the back of the court whilst the witness gave evidence and took little further part in the proceedings.
31. I confirmed that the second ground of appeal against the First-tier Tribunal Judge's decision by the Secretary of State was also allowed on the basis that the asylum analysis which had been set aside would affect and taint

the findings in relation to Article 8. That part of the First-tier Tribunal judge's decision was also set aside. It was confirmed that both the protection and the human rights grounds were to be considered before me.

32. The appellant did give evidence before the First-tier Tribunal and that evidence stands as his evidence before the Upper Tribunal. He had told the first Tribunal that he had moved in with JT in 2015 but had not told his housemates who were Muslim because they would not accept it. He confirmed he shared a house with JT but had casual relationships with other men and they had a few mutual friends. He also confirmed that JT had arthritis, but other friends would assist with medical appointments. If he had to return to Algeria, he hoped JT would visit him. It was accepted by JT at the First-tier Tribunal hearing that "they are no longer together" but they continued to have a sexual relationship. JT discovered the appellant was an illegal immigrant when he reported him as a missing person to the police. As the First-tier Tribunal Judge recorded at [57] (a finding which was not set aside) "what was evident was that the relationship in some form still exists but what was unclear was the appellant's commitment to it".
33. It was clear at [59] that the First-tier Tribunal Judge accepted the appellant was gay and although that was an issue in contention previously the Secretary of State now accepted that the appellant was indeed gay.
34. The First-tier Tribunal noted that the appellant's account was that his parents were dead, and indeed the appellant confirmed in his asylum interview that both his mother and father were dead. The judge recorded at [61] that the appellant went to Algiers at the age of 15 and the judge did not find the appellant's claim to be credible in respect of his sister.
35. The appellant had stated that he was openly gay in the UK but had not come out in Algeria and stated that it was hard at keeping it a secret. Indeed, at question 63 of his asylum interview the appellant stated, "back home a little bit of people they know about it for instance if I tell people, it is a bit dangerous but here in the UK, I let people know about my sexuality I have met a lot of people like me". The appellant stated however that he was gay but had not declared this to his Muslim housemates. Even if the appellant is openly gay however that does not necessarily place him at risk.
36. The question of risk to the appellant in Algeria for being gay and as posed by **HJ (Iran) [2011]** 2 AC 596, was effectively addressed in **YD (Algeria) v Secretary of State for the Home Department [2020] EWCA Civ 1683** which was heard in December 2020 and at paragraph 38 and 39 referenced and condoned the country guidance issued by the Upper Tribunal. At paragraphs 38 and 39 Lewis LJ stated as follows:

"38. The Upper Tribunal then set out its conclusions on the evidence under a series of headings. First, in relation to the

prosecution of gay men, it had already noted that the Algerian criminal code criminalised all homosexual acts, although more severe penalties were imposed where the acts were done in public or where one participant was under 18 years of age (see paragraph 19 of its judgment). The Upper Tribunal was satisfied on the evidence that the Algerian authorities did not generally prosecute a person for homosexual behaviour even when that came to the attention of the public or the authorities. The evidence in fact pointed the other way (see paragraphs 141-143 of its judgment). It concluded that the evidence did not establish that Sharia law providing for severe punishment was applied to gay men in Algeria. The Upper Tribunal concluded that there was no reliable evidence to establish a risk of targeted or arbitrary attacks on gay men or abusive treatment by police. Some gay men did experience violence at the hands of family members when they disclosed to them that they were gay or that was discovered. But outside the family, the evidence did not establish that gay men faced a real risk of being subjected to violent attack by the authorities or by members of the public who came to know that a man was gay (see paragraph 153 of its judgment). The Upper Tribunal concluded that there was a range of responses experienced by gay men who were recognised as such although in most, possibly nearly all, cases this would involve expressions of disapproval and fell a long way short of establishing that responses would involve physical ill-treatment (outside of the family). It referred to the evidence that social responses ranged from mockery and stigmatisation to outright hostility. At paragraph 162, the Upper Tribunal said this:

'162. Drawing all of this together we are satisfied that the evidence clearly demonstrates that there will be a range of responses to displays of homosexual behaviour outside the family context, but while the risk of a physical attack cannot be excluded, generally the response will be at the lower end of that range. Where the response is at the upper end of the possible range of responses, that is likely to be because open displays of affection in public are simply not tolerated, whether that be by heterosexual couples or homosexual couples'.

39. *The Upper Tribunal considered whether gay men in Algeria were able to live openly as gay. It noted that few gay men chose to live openly there and that that was the result of a number of considerations including cultural, religious and societal views, the intense and deep rooted and near universal disapproval of homosexuality that prevails in Algeria, and near universal adherence to and respect for social and religious*

mores. It concluded on the evidence that the choice to live discreetly as a gay man was not generally driven by a need to avoid persecution but by social pressures of the type contemplated in HJ (Iran) (see paragraph 168)”.

37. **OO** stated at paragraphs 186 to 190 the following:

“186. The answer, in our judgement, is as follows:

- a. The only risk of ill-treatment at a level to become persecution likely to be encountered by a gay man in Algeria is at the hands of his own family, after they have discovered that he is gay. There is no reliable evidence such as to establish that a gay man, identified as such, faces a real risk of persecutory ill-treatment from persons outside his own family.
- b. Where a gay man remains living with his family to whom he has disclosed his sexual orientation in circumstances where they are prepared to tolerate that, his decision to live discreetly and to conceal his homosexuality outside the family home is not taken to avoid persecution but to avoid shame or disrespect being brought upon his family. That means that he has chosen to live discreetly, not to avoid persecution but for reasons that do not give rise to a right to international protection.
- c. Where a gay man has to flee his family home to avoid persecution from family members, in his place of relocation he will attract no real risk of persecution because, generally, he will not live openly as a gay man. As the evidence does not establish that he will face a real risk of persecution if subsequently suspected to be a gay man, his decision to live discreetly and to conceal his sexual orientation is driven by respect for social mores and a desire to avoid attracting disapproval of a type that falls well below the threshold of persecution. Quite apart from that, an Algerian man who has a settled preference for same sex relationships may well continue to entertain doubts as to his sexuality and not to regard himself as a gay man, in any event.

187. Underpinning these conclusions is recognition that Algerian society is governed by strict Islamic values which all citizens, including gay men, in practice respect, even if only for pragmatic reasons.

188. This gives rise to a compromise which in some senses is unsatisfactory but, as a matter of law, does not give rise to a right to be recognised as a refugee. Algerian society, including

the state authorities, effectively tolerates private manifestations of homosexual conduct, both between young unmarried men and gay men who have established themselves away from the family home, provided there is no public display of it. Gay men choose to live discreetly not to avoid persecution, because there is no evidence that there is any, but because they recognise that the society they live in is a conservative one, subject to strict Islamic values, that is unable to openly embrace the existence of the practice of homosexuality, just as women are expected to submit to Islamic requirements such as being veiled and accepting other limitations upon their ability to act as they may wish to.

189. *The evidence before us indicates that as a result of societal views and conditioning, Algerian men with a preference for same-sex relationships generally do not in fact regard themselves as gay men and so have no reason to identify themselves as such to others by conducting themselves in a manner that has come to be regarded as ‘living openly’ or discreetly. Therefore, choosing not to live openly as gay men is not due to a fear of persecution but other reasons to do with self-perception and how they wish to be perceived by others.*
190. *For these reasons, a gay man from Algeria will be entitled to be recognised as a refugee only if he shows that, due to his personal circumstances, it would be unreasonable and unduly harsh to expect him to relocate within Algeria to avoid persecution from family members, or because he has particular characteristics that might, unusually and contrary to what is generally to be expected, give rise to a risk of attracting disapproval at the highest level of the possible range of adverse responses from those seeking to express their disapproval of the fact of his sexual orientation”.*

38. The Country Policy and Information Note Algeria: Sexual orientation and gender identity, version 3.0 May 2020 underlined at paragraphs 2.4.7 to 2.4.10 the following:

*“2.4.7 The UT in **OO** also found that ‘Sharia law is not applied against gay men in Algeria. The criminal law is entirely secular and discloses no manifestation, at all, of Sharia law in its application.’ (para 173)*

*2.4.8 The available evidence does not show that there are very strong grounds supported by cogent evidence to depart from the findings of the UT since **OO [2016]** was promulgated. While same-sex relations remain criminalised and there is evidence that some gay or bisexual men may be arrested because of sexual identities there is no indication that these are frequent or widespread, and prosecutions for same-sex*

*relations almost never occur (see **Legal context** and **State attitudes and treatment**).*

2.4.9 *Specific information about the treatment of lesbian, bisexual, transgender and intersex persons by the state is not available in the sources consulted. However, there is no indication that the state's treatment of LGBTI persons is in general different from that experienced by gay or bisexual men (see **State attitudes and treatment**).*

2.4.10 *Although LGBT persons in Algeria are generally not open about their sexual orientation due to shame (OO), in general, LGBTI persons who are open about their sexual orientation or gender identity are not subject to treatment by the state which by its nature and/or repetition amounts to persecution. However, decision makers must consider whether there are particular factors specific to the person which would place them at risk. The onus is on the person to demonstrate this".*

39. **YD (Algeria)** was heard in December 2020 and post this CPIN of 2020 which was cited in the submissions of the appellant to demonstrate persecution. However, Lewis LJ in **YD (Algeria)** as identified above confirmed the approach taken by the Upper Tribunal in **OO**.
40. In effect, the case law details that it is the risk of ill-treatment at the hands of the person's own family after they have discovered they were gay which is predominantly relevant. It was the appellant's own evidence that his parents were dead. In his screening interview he said he had "nobody left back in the country [Algeria]" and in his screening interview he confirmed that his father had been killed (question 20) and his mother died (question 22). To that end the appellant therefore had no risk from his immediate family.
41. The Tribunal was presented with an email sent on the eve of the hearing on 14th February 2022 signed "Yours faithfully KK" in which he states that he could not be in attendance because he was sick and had added: "I realise JT may not be accepted by the court as a lay representative, but I ask that you accept this report on the current state of Algeria for gay men, and any contributions JT might make, in defence of my claim for asylum. Yours faithfully, KK".
42. The further statement was written in the third person (also on eve of the hearing of 14th February 2022) and appeared to have been written by JT the witness, himself. It stated, "In anticipation that he might be forcibly returned to Algeria, several years ago KK made efforts to establish telephone communication with family members".
43. The First-tier Tribunal Judge specifically found that the appellant's evidence as to his sister was "inconsistent" and "the entire account lacks plausibility and is inconsistent, accordingly I do not find this part of the appellant's

claim credible". That aside the third-party statement which was not made by the appellant by himself stated

"he felt it necessary to be honest and open with his sister about his sexuality and about his relationship with JT. (The sister had insisted that KK find himself a wife and, if he failed to do so, she would find one for him)".

44. And further,

"On hearing that he is gay, KK's sister told other family members, uncles, her husband, her sisters-in-law etc. that he is gay and in a relationship with an English man. They have all expressed their disgust and disapproval and made threats of violence. He now fears for his life if he is forcibly returned to Algeria. KK should be entitled to be recognised as a refugee".

45. First, this was not a statement made by the appellant who chose not to attend court. Second, this statement was not signed nor dated, and thirdly the assertion that he had had conversations with his sister about his sexuality ran counter to the appellant's own evidence in his asylum interview as recently as 2020 that he had had no contact with his family and to the First-tier Tribunal Judge in November 2020 particularly at question 46 when he was asked "Do you know where your sister is now?" he replied "no I have no idea". When he stated, "Did you ever try to find her since coming to the UK?" at question 47 he responded, "I did try I did ask but its not like when you are there".
46. The witness JT stated that he tracked his sister down through his neighbour and I find this wholly contradictory and inconsistent with the appellant's own evidence. It is simply incredible that having stated in 2020 that he would have no idea where his sister was that he could immediately find her through an ex-neighbour. I did not find the evidence of JT on this credible.
47. JT stated that he had witnessed telephone conversations with the appellant and his sister, and they were violent telephone conversations. JT did not give the sister's name and even confirmed that he did not speak French and then the said "sister" spoke Arabic. JT himself apparently had limited Arabic. I find this evidence wholly lacks weight. There were no details in relation to the sister, no name, no address, no record of any telephone calls. JT stated that he and his partner were technologically slow, but it was given in evidence before the First-tier Tribunal that the appellant is familiar with using apps such as Grindr in order to secure other sexual assignments. I also note that JT used to be a Financial Times journalist and even if he was not aware of how to record telephone conversations, he could easily seek advice on how to do so. The lack of evidence in relation to the existence of the sister and her views significantly undermined the appellant's claim. I am fully aware that corroboration is not required in asylum claims but it could be reasonably

expected that the appellant would attend court to give evidence on this point. Indeed, there was no evidence whatsoever from the appellant himself in relation to this assertion that he had been in contact with his sister. The assertion was made in the unsigned third-party statement given by email and in the evidence by JT.

48. One further point which is that even in this country the appellant claims that he had not told his Muslim housemates that he was gay. The appellant accepted that he was open as to his in the UK but he himself chose not to reveal this information to his housemates. I conclude that that is a matter of societal pressure as described in OO. His circumstances fall within the parameters of OO.
49. In relation to the questions to be asked as per OO it is accepted that the appellant is gay and therefore even if he returned to Algeria he would not necessarily live as an openly gay person because of the societal pressures which he has already conformed with in this country. As set at paragraph 189 of OO "choosing not to live openly as gay men is not due to a fear of persecution but other reasons to do with self-perception and how they wish to be perceived by others".
50. I note that the appellant did not wish to out himself to his Muslim friends and housemates even in this country albeit he maintained he lived an openly gay life. The appellant declared himself in his asylum interview at question 7 to be Muslim and "only following the religion".
51. It is only if he shows that:

"Due to his personal circumstances it would be unreasonable and unduly harsh to expect him to relocate within Algeria to avoid persecution from family members or because he has particular characteristics that might unusually and contrary to what is generally to be expected to give rise to a risk of "attracting disapproval at the highest level of the possible range of adverse responses".

52. I do not accept that the appellant knows where his family is, and indeed he himself stated that he left his home area to go to Algiers when he was 15. He had the resourcefulness to have removed himself to the UK and could no doubt relocate as he did previously within Algeria. There was no evidence that the sister and any extended family have the wherewithal to find the appellant should he find the need to relocate within Algeria. There is no indication that he would be at risk of attracting disapproval at the highest level of the possible range of adverse responses from those seeking to express their disapproval. There was no evidence that he was even in contact with his family, let alone that there was any power or influence of his family. I refer to the Country Policy and Information Note, Algeria: Sexual orientation and gender identity, version 3, May 2020 as cited above.

53. **YD (Algeria)** was heard as I state after the CPIN, and I am not persuaded that the further information that was provided for me in any way provides strong grounds for departing from **OO (Algeria)** which as I say was confirmed by **YD (Algeria)**. As Ms Ahmed submitted the country policy guidance reflected **OO (Gay Men) Algeria CG [2016] UKUT 65**. I was provided with an extract from Algeria: Mass convictions for homosexuality which was published on 21st October 2020 by Human Rights Watch (and prior to YD (Algeria)' promulgation) but it would appear that the court convicted 44 people for not only "public indecency" but also "subjecting others to harm by breaking Covid-19-related quarantine measures". The report identified that "Since March, Algerian authorities have imposed a ban on all social gatherings to slow the spread of Covid-19".
54. The extract from "Homosexuals in Algeria: From Self-Hating to Sexual Apartheid" was published on 18th December 2017 and predated the CPIN and also predated **YD (Algeria)** related to the writer who writes about the lives of LGBT people in Algeria. This article states that in fact the investigation was because the writer was "offending God" in his novel "City of the White Shadows" and identifies "the strong argument which ultimately swayed public debate in favour of my novel". Additionally he refers to "Algerian society's acceptance of this 'minority' solely within the confines of their self-hatred" and he also states, "this explains some violent practices against this community whose members never bother to report any incidents of assaults to the police". He also states, "only a tiny number of people who can be counted on the fingers of one hand are frankly expressing their opinions on the subject". He adds in conclusion "lastly I want to affirm that the LGBT community in Algeria is experiencing a sexual revolution, but they are in dire need of a parallel intellectual one". Again nothing in this article provides strong grounds for departure from the country guidance in **OO**.
55. The House of Commons Library LGBT+ rights and issues in North Africa published on 21st December 2021 identified that there had been "no known prosecutions during 2020 despite the criminalisation of 'homosexual acts' and merely that 'NGOs reported that judges gave harsher sentences to LGBT+ people for the above crimes compared to non-LGBT+ people'". Bearing in mind the crime referred to above was on same-sex relations this analysis does not bear scrutiny.
56. Nothing in the documentation provided persuaded me to depart from **OO**.
57. Overall the appellant may face a societal discrimination but not such that would give rise to a real risk of persecution for any of the protection grounds or Article 3. There exists in Algeria an LGBT community which is evidenced by the House of Commons extract which confirmed that there are for example organisations which maintain a list of LGBT friendly hospitals and that "NGOs reported that employers refused jobs to LGBT persons" but that was a general assertion.

58. I consider the appellant's belated assertion that he has located and talked to his sister, particularly to relation to his sexuality to be untrue. When asked in his interview at question 53 "Is your still in Algeria?" he replied, "err I have no idea if she stayed there so since I left, I have not talked to her". I thus consider his belated assertion that he has located and talked to his sister particularly to relate his sexuality untrue. He has not made a statement to this effect but relied on a third party to make such an assertion in an unsigned submission. I place minimal weight on this document as it is unsigned and moreover, I wholly reject his claim that his family have made threats against him owing to the inconsistency of the appellant's evidence. The report cited in the submissions are not strong evidence further to **SG (Iraq) [2012] EWCA Civ 940** that I should depart from any country guidance particularly as it was upheld by **YD (Algeria)**. As held in SG Iraq 'judges are required to take Country Guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced justifying their not doing so'.
59. I am not therefore persuaded that the appellant has a real risk of persecution or faces a breach of his Article 3 rights which stand and fall with the protection claim should he return to Algeria.
60. Turning to Section 117C of the Nationality, Immigration and Asylum Act 2002:

"117C Article 8: additional considerations in cases involving foreign criminals

- (1) *The deportation of foreign criminals is in the public interest.*
- (2) *The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.*
- (3) *In the case of a foreign criminal ('C') who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.*
- (4) *Exception 1 applies where -*
 - (a) *C has been lawfully resident in the United Kingdom for most of C's life,*
 - (b) *C is socially and culturally integrated in the United Kingdom, and*
 - (c) *there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.*

- (5) *Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.*
- (6) *In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.*
- (7) *The considerations in subsections (1) to (6) are to be taken into account where a court or Tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted".*

61. The appellant is a foreign criminal. He was sentenced to a period of imprisonment of eighteen months, and I am not persuaded that any of the exceptions under Section 117C(4) apply to him bearing in mind that the exceptions are conjunctive. He cannot fulfil Sections 117C (4)(a). He entered the UK illegally in 2010, that is twelve years ago, and remained illegally and has always known that he had remained illegally. I acknowledge that he entered as a minor and have taken this into account but even during his adulthood he failed to co-operate with the authorities. Additionally since being an adult he has committed offences of theft which attracted a term of prison which undermines the confirmation that he is integrated within society. The sentencing remarks at Southwark Crown Court from Her Honour Judge Korner CMG QC stated: "you pleaded guilty to five offences of stealing property belonging to other people". This included valuable items such as "computers and telephones" and that "as a result of taking their laptops they can lose information which is vital to them". The judge added "in your case, the last two offences are aggravated by the fact that they were committed not long after you had already appeared on a charge of theft from a person and had been conditionally discharged" and that "you have clearly been living by criminal means apparently since 2017" and it was noted that he had "breached the conditional discharge".

62. I find that the appellant entered the UK illegally, lived in the UK illegally, has not co-operated with the authorities until he was about to be deported, and has, as found in the sentencing remarks lived by criminal means since 2017. I do not accept JT's assertion that he was "duped" by those committing offences with him owing to the number of offences and the fact that he apparently was continuing to commit offences from 2017 to 2019 and during his said relationship with JT.

63. Turning to whether there would be very significant obstacles to his integration into the country from which it is proposed to be deported and approaching the question on a broad evaluative basis as required by Secretary of State v Kamara [2016] EWCA Civ 813. As noted above the appellant declared himself to be Muslim at his asylum interview. It is clear that he speaks English, French and Arabic and is young, and I do not accept that he has any significant health issues. No medical evidence to that effect was produced before me. I have found that it is likely that few gay men choose to live openly in Algeria and that was as a result of a number of considerations including cultural, religious and societal views but on the evidence the choice to live discreetly as a gay man is not generally driven by the need to avoid persecution but by social pressures as identified in **OO** identified above. The fact that homosexual acts are criminalised in a particular country is not in itself recognised as giving rise to a well-founded fear of persecution and I am not persuaded that it is a significant obstacle to his reintegration in Algeria. When considering matters such as social stigma these are considered to be part of the social pressures that may affect gay men but are not capable of amounting to persecution (**YD (Algeria)** [42]). Cumulatively there was no real risk of violence or other response to adverse behaviour and no real risk of violence or other persecutory ill-treatment outside the family.

64. In terms of employment at [47] **YD (Algeria)** stated this:

“47. It therefore identified the relevant principle and applied that to the evidence before it. It sought to consider how openly gay men would be treated in Algeria. There were difficulties in doing that as the evidence was that most gay men in Algeria did not live as openly gay men and, indeed, many would not have identified themselves as gay for societal, cultural and religious reasons. But there is no doubt that the Upper Tribunal was seeking to determine how gay men who lived openly would be treated. By way of example only, it considered how the authorities would act when a person’s homosexual behaviour was drawn to the attention of the authorities or members of the public (see paragraphs 23 and 69). Again, by way of example, it looked at how service providers and employers would react to homosexuals (see for example paragraphs 86 to 87 and 89 to 90). At paragraph 168, it specifically considered how a gay man who did live openly as such in Algeria would be likely to be treated and concluded that he would attract upsetting comments, his relationship with friends and work colleagues would be damaged and he would suffer discriminatory experiences not amounting to persecution. The Upper Tribunal had difficulty in assessing how gay men who lived openly would be treated as there were very few men who did so. But there is no doubt that it identified and asked the correct question, and sought, so far as it was able to do so, to consider how an openly gay man would be treated in Algeria. Furthermore, it also

considered if the fact that there was little evidence of gay men living openly in Algeria was itself evidence that that was because of the risk of persecutory ill-treatment if they did so. The Upper Tribunal concluded on the evidence, however, that was not the case. Gay men did not live openly because of the cultural, religious and societal views prevalent in a conservative society subject to strict Islamic values. The Upper Tribunal did not therefore fail to ask the correct question”.

65. I have considered whether the appellant would be able to return to Algeria and be somewhat of an insider. He was described in the witness statements before the First-tier Tribunal as “devout” and “I know from other gay Muslim friends – it can be difficult for him to be gay and out”. He lived in Algeria until he was 15 and had limited schooling but had displayed resourceful characteristics in coming to the UK. He speaks the language. Although it was asserted that he could not work, he is clearly able to use a mobile phone and physically able. The appellant did not attend. It was not possible to ask him questions as to whether he was able to work but bearing in mind it was asserted that he assisted JT with various caring and housework duties, I conclude he would be able to secure such work on return to Algeria.
66. I find the appellant will be ‘*enough of an insider in terms of understanding how life in that other country is conducted and a capacity to participate in it*’, and ‘*have a reasonable opportunity to be accepted, operate on a day-to-day basis and to build up within a reasonable time a variety of human relationships*’.
67. In terms of his relationship with JT, although JT himself considered that they had a committed and long-standing relationship the evidence provided in JT’s statement, paragraph [4], was “our relationship was not working anymore so after almost seven years together in a monogamous relationship we decided to separate”. That statement was made on 29th September 2020. I note the oral evidence given by JT at the hearing before me but what was recorded by the First-tier Tribunal at [37(c)] of the decision was that the appellant stated that:
- “Currently they are not in a relationship they had an argument and they separated but he is still living with JT but not as a couple. It has been about two months that they have just been living together. The reason why the relationship is strained is because they have had lots of arguments and JT has accused him of having other men and a few other reasons”.*
68. I do not find that there is a firm and committed relationship. Although JT stated that the appellant provided caring duties for him it is quite clear from the witness statements (although none of those who gave statements appeared at the Tribunal before me) that JT has friends to support him, and he has his own house and his own friends who assisted him whilst the appellant was in prison. Indeed, JT was able to cope whilst

the appellant was in prison for at least nine months. I am not persuaded that the appellant and JT are still in a committed relationship and significantly if the appellant wished to rely on that point, he would have attended court to explain the position, particularly to counter the evidence he gave before the First-tier Tribunal.

69. Additionally it is clear that the appellant and JT formed and developed the relationship in full knowledge that the appellant was residing in the UK illegally and further to Section 117, I place little weight on the relationship.
70. I consider that there are no very significant obstacles to the appellant's removal to Algeria.
71. Turning to very compelling circumstances I have considered all the evidence that was before me. There is significant public interest in deporting the appellant. He is an illegal entrant; he has remained in the UK illegally but moreover has been convicted of theft and breached a conditional discharge. He is thus subject to the automatic deportation provisions under Section 32. He has spent the majority of his life in Algeria, and I have found his protection claim to be unmeritorious.
72. I find that the appellant is young, fit and healthy. It was asserted contrary to his screening interview, in which he himself gave responses, that he was "partially blind" for which there was no medical evidence and that he was softly spoken (which does not constitute a very significant obstacle or a compelling circumstance). He may face more difficulty as per the CPIN 5.5 in obtaining employment owing to discrimination, but I am not persuaded that he will be unable to find any work. He can speak English (Section 117B(2)) and there is no indication that he has accessed state finance further to Section 117B(3), but these findings are neutral in terms of any proportionality exercise. I do identify that the appellant is using the NHS (an appointment was made for his eyesight). To that end he is not financially independent of the state.
73. The appellant cannot fulfil paragraph 399 or 399A of the Immigration Rules which are in similar terms to those at Sections 117C; the Immigration Rules set out the position of the Secretary of State and it is clear from Section 117 that deportation is in the public interest.
74. Having found that the appellant has not made out any protection claim he cannot fulfil the exceptions of Section 117C and he denied a real relationship with his said partner JT although he expressed a wish that he would visit him should the appellant return to Algeria. JT has clearly a number of friends witnessed by those who would support him at the hearing and the letters but these were more friends of JT and I find that JT would have support should the appellant be returned to Algeria and I am not persuaded that there was evidence of JT being significantly affected by the appellant's removal further to **Beoku-Betts v SSHD** [2008] UKHL 9.

75. There appeared to be little in the way of positive features in the balance sheet in favour of the appellant remaining in the UK and I find further to **R (Agyarko) [2017] UKSC** there would be no unjustifiably harsh consequences on his removal to Algeria.

Notice of Decision

The appeal of KK is dismissed on asylum, humanitarian protection and human rights grounds.

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

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.”

Signed Helen Rimington

Date 7th June 2022

Upper Tribunal Judge Rimington