



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

Appeal Number: IA/22979/2015

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

**Oral determination given following
hearing**

On 16 January 2018

On 28 February 2018

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR HAMZA AKACHA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A Brocklesby-Weller, Senior Home Office Presenting Officer

For the Respondent: Mr M Moriarty, Counsel, employed by Luqmani Thompson & Partners

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against a decision of First-tier Tribunal Judge N M K Lawrence promulgated on 24 April 2017 following a

hearing at Harmondsworth on 4 April 2017. For ease of convenience I shall throughout this decision refer to the Secretary of State, who was the original respondent as “the Secretary of State” and to Mr Akache, who was the original appellant as “the claimant”.

2. The claimant is a national of Algeria who claims to have been born on 31 August 1982. He entered the UK illegally in April 2011 making an application for asylum the following day. That application was withdrawn two days later and he effectively went underground. Certainly nothing was heard from him, although it does not appear as if the Secretary of State made any efforts to remove him. It seems that while in this country he met and began living with a British lady Ms Murray and on 31 March 2015 he made an application to be allowed to remain under the family and private life provisions of the Rules. This application was refused by the Secretary of State in a decision dated 11 June 2015. The appellant appealed against this decision and although that appeal was dismissed the claimant was granted permission to appeal against the decision and the appeal was remitted for a new decision by Upper Tribunal Judge Rimington in a decision dated 7 February 2017.
3. The appeal was then heard by First-tier Tribunal Lawrence who, as already noted above, allowed the appeal. The Secretary of State now appeals against that decision pursuant to permission which was granted by First-tier Tribunal Judge Hollingworth on 27 November 2017.
4. Essentially Judge Lawrence allowed the appeal on the basis that EX.1 applied because the claimant although in this country illegally was in a genuine and subsisting relationship with a British national and had been for at least two years prior to the date of his application. It followed that he should not be removed if there were “insurmountable obstacles” to family life continuing outside the UK and Judge Lawrence found that there were. The basis of the appeal is that the reasons given by Judge Lawrence for so finding were insufficient to allow such a finding to be made.
5. Certain of Judge Lawrence’s findings are not now challenged and indeed on the basis of the evidence could not be. It is not challenged that the relationship between the claimant and Ms Murray is a genuine one and that they are cohabiting as claimed and indeed had been cohabiting for at least two years prior to the application having been made. Equally it is not suggested on behalf of the claimant that his immigration history is other than as stated, that is, that he came to this country illegally, made an asylum claim which he did not pursue and thereafter had no legitimate basis upon which he could claim to be allowed to remain in this country.
6. So far as Ms Murray is concerned the couple have now undergone an Islamic marriage although Ms Murray (who is so named at work although for these proceedings she preferred to be called Mrs Akacha) has not converted and there has not been a civil ceremony. However, there is as already noted no challenge to the fact that they are a genuine couple.

7. There was evidence before Judge Lawrence relating to the relationship and also relating to the difficulties that there might be within Algeria such as Ms Murray's inability to speak the language, her lack of any knowledge of Algerian culture, and so on. Also it was argued before the First-tier Tribunal and it is also apparent from the decision (see in particular paragraph 9) that her current employer, Queen Mary College, which is part of the University of London, is a very sympathetic employer who makes proper allowance for her medical condition so as to enable her to carry out her job pursuant to the requirements of Health and Safety (Display Screen Equipment) Regulations 2002. There was also evidence that she attends physiotherapy in this country for her condition and she has had numerous appointments at Whipps Cross University Hospital in East London. Although the judge did note that there was not any substantial evidence relating to what treatment might or might not be available in Algeria, certainly he had in mind that she was receiving very great care in this country, which was one of the factors which he considered relevant to the issue of whether or not there would be "insurmountable obstacles" to her continuing her family life with the claimant within Algeria. The other factor which the judge had in mind was the advice given by the Foreign and Commonwealth Office warning British nationals that there was a "high threat from terrorism in Algeria" and that "attacks could be indiscriminate, including in places frequented by foreigners" such that all British nationals within Algeria "should take great care at all times". The judge did not overstate the risk within his decision but stressed at paragraph 12 that the government through the Foreign Office had considered the risk to be "heightened" and that "In my view, the UK government would not have put out this "Advice" if it did not believe that risks to British nationals are "heightened"". The judge also said that the risk, which was "not a rhetorical one" would be "much more for British nationals who ... live there".
8. With regard to the tendonitis from which Ms Murray suffered which was "a condition which needs regular physiotherapy" although the judge noted that there was "no evidence before me that such treatment is not available for her in Algeria", he went on to find that "however, the medical condition coupled with the security threat as set out by the UK government to British nationals" supported a finding that there were insurmountable obstacles in his family life continuing in Algeria.
9. The basis of the Secretary of State's appeal is that the reasons given by the judge lack sufficient weight to justify the findings which he made. I agree with Mr Moriarty, appearing on behalf of the claimant that in effect this is a perversity challenge. The issue I have to decide is whether or not on the basis of the material before him and the reason which he gave the decision can be said to be such that no judge considering this evidence could have reached the same conclusion. It is not my task to make a decision based on what I might or might not myself have found on this evidence; it is only if I consider that the decision reached was not open to any judge on the material before him or her that I can say find there was a material error of law in the judge's finding.

- 10.** Having considered the evidence very carefully indeed, I agree with Mr Moriarty that the judge set out the law correctly. He understood that he could only allow the appeal if on the basis of the material he considered the obstacles which would be faced by Ms Murray were so serious as to amount to very serious obstacles indeed. He did not overstate what the difficulties were, but he had in mind the two issues which were raised which were first the medical difficulties and secondly the dangers to a British citizen carrying on life within Algeria. He considered that cumulatively they were sufficiently serious as to cross the threshold required to establish that the obstacles could be said to be "insurmountable". Although another judge may have reached a different conclusion, I do not consider that the decision was so outlandish that it was not open to him so to find. He was entitled to take very seriously the advice given by the Foreign Office and he was also entitled to take account of what is clearly a serious medical condition suffered by Ms Murray which is being treated in this country at the moment and in respect of which she is fortunate enough to have employers in this country who are sympathetic to her condition and wish to safeguard her. These issues are in my judgement just sufficient to enable a judge considering the appeal properly, as in my view this judge did, to reach the decision that he did.
- 11.** In these circumstances, it follows that I find that there was no material error of law in Judge Lawrence's decision and accordingly there is no basis upon which his decision should be set aside. I accordingly make my decision as follows.

Decision

There being no material error of law in the decision of the First-tier Tribunal, the Secretary of State's appeal against that decision is dismissed, the consequence being that the decision of the First-tier Tribunal, allowing the claimant's appeal against the Secretary of State's decision is affirmed.

No anonymity direction is made.

Signed:

A handwritten signature in black ink, appearing to read 'Ken Craig', is written over a light blue rectangular stamp.

Upper Tribunal Judge Craig Dated: 25 February 2018