



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01294/2013

THE IMMIGRATION ACTS

Heard at Field House
On 10th March 2014

Determination sent
On 25th March 2014

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

MR L M L
(Anonymity Direction Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Chirico of Counsel instructed by Elder Rahimi Solicitors
For the Respondent: Mr S Whitwell a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Algeria who was born on 23 December 1994. He has been given permission to appeal the determination of First-Tier Tribunal Judge Mitchell ("the FTTJ") who dismissed his appeal against the respondent's decision of 27 June 2010 to give directions for his removal to Algeria following the refusal of asylum.
2. The appellant claimed to have suffered physical and emotional abuse and neglect and abandonment by his father and stepmother in Algeria where he

lived on the streets for a time before escaping to Italy in about October 2009 where he also lived on the streets for several months until about May 2010. He then travelled to the UK. He was discovered on board a ferry and handed over to the UK police. He claimed asylum on 20 May 2012.

3. The respondent took a long time to deal with the appellant's application and the decision was not issued until he was aged 17 years, six months and two days. By that stage he was just too old to benefit from the respondent's policy on unaccompanied asylum seeking children.
4. The appellant claimed that past ill-treatment in Algeria was an indication of the real risk of ill-treatment if he was to return. He was vulnerable and had been diagnosed as suffering from anxiety and depression, separation anxiety, panic stress and PTSD. He needed counselling which was being provided in this country.
5. The respondent has not attempted to trace the appellant's family. In any event the appellant does not wish to return to them. The respondent did not accept that the appellant was a citizen of Algeria although removal directions had been given to that country. Although the appellant claimed to have suffered sexual abuse no further information about this had been provided. No Convention reason had been established. The respondent was of the view that there was a sufficiency of protection for the appellant in Algeria and that he could seek help from the authorities. There were facilities to assist children up to 21 years of age who lacked family support so that he would not be homeless or destitute. He had not established that his human rights would be infringed and he was not entitled to humanitarian protection.
6. The appellant appealed and there was an appeal hearing before a First-Tier Tribunal Judge on 19 March and 29 May 2013. The appellant's appeal was dismissed on all grounds. The appellant appealed and permission to appeal was granted. Subsequently, an Upper Tribunal Judge found that there were errors of law such that the appeal decision should be set aside. It was set aside and directions given that the appeal should be reheard before another First-Tier Tribunal Judge. It was in these circumstances that the FTTJ heard the appeal on 5 December 2013. Both parties were represented, the appellant by Mr Chirico who appears before me. Whilst the appellant was 15 years of age when he arrived in the UK by the time of the hearing he was nearly 19. The appellant gave evidence. The FTTJ found that on the evidence the appellant had not suffered persecution for a Convention reason. He rejected Mr Chirico's argument that there was a particular social group comprising "people under the age of 21" and dismissed the appeal against the refusal of asylum.
7. The FTTJ accepted the appellant's evidence that he had been abused by his family. The respondent had delayed consideration of the appellant's claim for a disproportionate time and had not provided any reasonable explanation. The facts of the appellant's claim were largely undisputed and the appellant

had co-operated with the respondent. There could be considerable delay in obtaining travel documents from the Algerian authorities.

8. The FTTJ found that the appellant was suffering from PTSD and self-harming. He should be regarded as a vulnerable adult. He could access mental health treatment in Algeria. The abuse he had suffered in Algeria had not crossed the Article 3 threshold. The FTTJ found that the appellant had not shown that he could meet the requirements to succeed on Article 8 human rights grounds under the Immigration Rules. He went on to consider the Article 8 grounds outside the Immigration Rules. The appellant had established a private life in this country but not a family life. He was suffering from PTSD and depression. However, his removal would not be a disproportionate interference with his right to respect for his private life.
9. The FTTJ dismissed the appeal on Refugee Convention, humanitarian protection and human rights grounds.
10. The appellant applied for and was granted permission to appeal to the Upper Tribunal. There are three grounds of appeal all of which argue that the FTTJ erred in law. The first submits that the FTTJ failed to distinguish between sections 84(1)(c) and 84(1)(g) of the 2002 Act and the differences of principle between them. The second ground is that the FTTJ misdirected himself as to the relevance of the respondent's previous conduct in assessing proportionality under the Article 8 human rights grounds and failed to have regard to relevant considerations. Thirdly, the FTTJ failed to take into account or rationally assess considerations relevant to the proportionality exercise or the lawfulness of the appellant's removal. The grounds are lengthy and detailed. During the course of his submissions Mr Chirico withdrew paragraph 19(i) of the grounds.
11. There is a Rule 24 response from the respondent dated 28 January 2014 which submits that the FTTJ directed himself appropriately, made findings open to him on the evidence and there is no error of law.
12. Mr Chirico relied on his grounds of appeal. He submitted that the appellant was a vulnerable adult. He needed and was getting a lot of support in this country. The education he was receiving would be stopped if and when his asylum appeal failed. However, Mr Chirico accepted that he might not be thrown out of a continuing course and that Social Services would do their best to prevent this happening. They might also try and find him access to further education. However, he would be left with a very restrictive form of existence during the time which it would take to obtain the documents to return him to Algeria. He would get some continuing care at a lower level until he was 21 and then, potentially, until he was 26 if he remained in full-time education. He would not be given any vocational training or job centre support. He would not be entitled to work or have access to non-urgent medical care. In paragraph 136 the FTTJ should not have said that the issue of any delay in

obtaining a travel document from the Algerian authorities might well be a matter for a future court to decide. He should have decided it.

13. In relation to the second ground Mr Chirico accepted that the principle set out by the FTTJ in paragraph 70 was correct but it had not been properly applied. In the light of the delay by the respondent the FTTJ should have reduced the weight given to the public interest.
14. In relation to the third ground Mr Chirico did no more than rely on what is said in the grounds of appeal. I was asked to find that the FTTJ erred in law, set aside the decision and consider whether the appeal should be re-decided in the First-Tier or the Upper Tribunal. He indicated that the appellant wished to obtain a psychiatric report.
15. Mr Whitwell relied on the Rule 24 response. In relation to ground one he submitted that it was clear from paragraphs 48, 50 and 137 that the FTTJ had in mind the provisions of paragraph 84(1)(c). The correct test had been applied as appeared from paragraphs 76 and 136. The position might be different if the appellant was in custody whilst travel documents were obtained from the Algerian authorities but this was not likely. The appellant could minimise the delay in obtaining the travel documents by cooperating or going to the Algerian Embassy to apply for them. There was no reason to suppose that he would not co-operate.
16. As to ground two it was irrelevant whether the FTTJ misquoted the source of the authority he was relying on because the principle was correct. What was said in paragraphs 70 to 74 indicated that the question of delay was in the forefront of the FTTJ's mind. In paragraph 133, the FTTJ was clearly referring back to what he said earlier. There was no error of law.
17. Grounds 2 and 3 were no more than disagreements with conclusions properly reached by the FTTJ on all the evidence. In relation to paragraph 21 of ground three, paragraph 339K of the Immigration Rules relating to past persecution being a strong indicator of future risk was irrelevant where the FTTJ had found that the asylum grounds failed for lack of a Convention reason.
18. Mr Whitwell submitted that the law relating to the importance of private life had evolved since the grounds were prepared. Furthermore, the FTTJ was in effect saying no more than that the appellant was streetwise. There were no errors of law and I was asked to uphold the determination.
19. In his reply Mr Chirico argued that if the appellant failed on ground one then this would not impact on grounds two and three. Paragraph 133 of the determination did not show that proper weight had been given to delay in reducing the effect of the public interest.
20. I reserved my determination.

21. In relation to the first ground of appeal I find that the FTTJ had in mind the differences between sections 84(1)(c) and 84(1)(g) of the Nationality, Immigration and Asylum Act 2002. These are set out in paragraphs 48 and 50 and there is nothing in the grounds of appeal which persuades me that they were not applied. What is said in paragraph 10 of the grounds is a selective quotation from the determination. Whilst in paragraph 86 the FTTJ said that “the timescale of the appellant’s removal may be up to 2 years” (my emphasis) Mr Chirico fails to mention the FTTJ’s final conclusion about this in paragraph 136 where he said; “the event in question, the obtaining of a travel document, has been historically so variable in time because of peculiar factors for each application makes it an impossible task”. This was a conclusion open to the FTTJ on the evidence and he did consider all the factors set out in the first ground of appeal. In paragraph 135 the FTTJ gave proper consideration to the immediate effect on the appellant’s mental health of the prospects of delay and in paragraph 136 he said that he could not consider the effect of any future delay, not because it would be inappropriate to do so, but because the evidence was insufficient for him to make a finding as to what that delay might be. I can find no fault with the FTTJ’s observation in relation to obtaining a travel document from the Algerian authorities in paragraph 136; “that issue may well be a matter for a future Court to decide when the facts are clear.” The FTTJ was not abdicating responsibility for making such a decision, only observing that the question might need to be revisited at some future time when the evidence was clear. I find that the FTTJ did not inappropriately limit his jurisdiction or, in paragraph 137 or elsewhere, conflate the provisions of the two sections. What the grounds neglect to mention is that the appellant, who was found to have co-operated with the respondent in the past, could make his own application to the Algerian Embassy in this country, or co-operate with the respondent in her efforts to obtain a travel document for him.
22. Mr Chirico has withdrawn paragraph 19(i) of the grounds of appeal which alleged that the FTTJ incorrectly referred to the judgement of the Court of Appeal in SSHD v Akaeke [2005] EWCA Civ 947. I find that in paragraph 70 the FTTJ correctly directed himself as to the principal that “delay may be relevant, in reducing the weight otherwise to be accorded to the requirements of full and fair immigration control”. Whilst there are subsequent references to two other factors relevant to consideration of the Article 8 grounds I can find no indication that the FTTJ did not continue to have in mind or failed to apply this principle. In paragraph 133 the FTTJ reminded himself of the submission made on the appellant’s behalf that “the interference would not be proportionate in all the circumstances. It was suggested that there is very little public interest in denying the appellant’s application.” The FTTJ then went on to say; “the issue of deterrence and (sic) is not necessarily aimed at this appellant but at other people who seek to come to the United Kingdom and breach immigration control.” In circumstances where the FTTJ concluded that the appellant came to this country for his own betterment rather than to seek international protection or escape serious harm and failed to claim asylum en route (paragraph 147) as well as the other factors assessed between

paragraphs 143 and 148 there remained a strong continuing public interest in maintaining immigration control. I find that in this regard the FTTJ did not err in law. Even if I had reached the opposite conclusion I would have found that in all the circumstances of the appellant's case any failure to take into account the reduction in the weight to be attached to the public interest could not have made a material difference to the outcome in relation to the Article 8 grounds.

23. In relation to the third ground of appeal there are, regrettably, further misleading quotations from the determination which undermine Mr Chirico's arguments. In paragraph 68 the FTTJ did not accept that the appellant was subjected to treatment in Algeria in breach of his Article 3 human rights. He accepted that the appellant had been abused by his family and said that; "such ill-treatment could reach the high and demanding level required to substantiate the claim under Article 3 of the ECHR" (my emphasis). In paragraph 126 the FTTJ did not accept; "that this showed that the protective system which the respondent claimed was in place in Algeria had been ineffective to present (sic) the appellant". What the FTTJ said in this paragraph was that there were indications that there were flaws and inconsistencies in the support provided by the authorities. In paragraphs 130 and 131 the FTTJ found that there was no real risk that the appellant would be abused in the future and that the respondent's assertion that there was a sufficiency of protection available to the appellant from the authorities in Algeria had not been challenged. The FTTJ went on to reach his own conclusion about this in paragraph 132 and to give reasons for doing so.
24. In relation to paragraph 22 of the grounds the FTTJ records that whilst the appellant claimed to have been sexually abused there was no evidence about this beyond the bare allegation that it had taken place in Italy, not Algeria. It was a relevant factor and the FTTJ was entitled to take into account that the appellant had managed to survive on the streets of Italy and obtain the substantial sum to pay the agent to bring him to the UK. The finding is not perverse. The FTTJ did take into account the appellant's studies in this country and the support and medical treatment he had received (paragraphs 119 to 121 which refer to earlier passages in the determination for greater detail). The grounds are unclear as to how it is argued that the appellant might have succeeded in relation to the Article 8 grounds as they now appear in the Immigration Rules as opposed to the Article 8 grounds under the Strasbourg jurisprudence outside the Immigration Rules. I find that the FTTJ did not err in paragraph 143. The reference is not to exceptional and compassionate circumstances but exceptional or compassionate circumstances. This could have been better expressed but the position is clarified in the following paragraph where the FTTJ stated; "the compassionate circumstances of the appellant do not make the decision to remove him disproportionate".
25. The FTTJ granted the appellant anonymity. I consider it appropriate and necessary to continue his direction.

26. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

27. I find that the FTTJ did not err in law and I uphold his determination.

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Signed
Upper Tribunal Judge Moulden

Date 17 March 2014