



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

Appeal Number: DA/00471/2013

**THE IMMIGRATION ACTS**

**Heard at : Field House**

**On : 2 January 2014**

**Determination  
Promulgated**

**On : 14 January 2014**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**and**

**RIADH MABROUK  
(NO ANONYMITY ORDER MADE)**

Appellant

Respondent

**Representation:**

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: Ms H Short, instructed by Wilson Solicitors LLP

**DETERMINATION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Mabrouk's appeal against a decision to refuse to revoke a deportation order made against him. For the purposes of this decision, I shall refer to the Secretary of State as the

respondent and Mr Mabrouk as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

2. The appellant is a citizen of Algeria, born on 8 February 1977. He claims to have left Algeria in August 2003 and travelled to the United Kingdom via Italy, France and Switzerland where he made an unsuccessful asylum claim. He was arrested upon entry to the United Kingdom on 7 June 2006 for entering with a false French passport and applied for asylum. He withdrew his asylum claim on 9 June 2006. Attempts to return him to Switzerland were unsuccessful. On 23 June 2006 he was convicted of possession of a false identity document with intent and was sentenced to eight months imprisonment.

3. On 30 August 2006 the appellant was served with a notice of decision to deport. He lodged an appeal against that decision but subsequently withdrew the appeal and stated that he wished to leave the United Kingdom. A deportation order was signed against him on 13 April 2007. In the meantime an Emergency Travel Document (ETD) application was forwarded to the Returns Group Document Unit (RGDU). On 30 July 2007 RGDU received a letter from the Algerian Embassy advising that the ETD application was rejected for lack of sufficient information. The appellant then undertook an interview with the Algerian Embassy on 25 September 2007 and the following day RGDU were informed that the Embassy was happy with the details provided. On 25 February 2008 the appellant applied to return to Algeria voluntarily under the enhanced Facilitated Return Scheme (FRS) and he was released from detention on 28 February 2008 on reporting restrictions. He failed to report after 27 March 2008 and was subsequently listed as an absconder and withdrawn from the FRS.

4. The appellant next came to the attention of the UKBA when he was arrested on 25 July 2010 for immigration matters. He was detained and on 25 August 2010 he re-applied for an assisted return under the FRS, stating again that he wished to return to Algeria. On 20 September 2010 an ETD application was re-completed. On 31 March 2011 the appellant was interviewed by Algerian officials but he was unable to provide any new information. On 14 April 2011 he had a telephone interview with the British Embassy in Algiers. On 1 June 2011 he was re-interviewed by an immigration officer in order to provide further evidence for his bio-data. That information was compared to the old bio-data and was found to be conflicting and inaccurate with respect to his place of birth. As a result the appellant was withdrawn from the FRS.

5. Following several unsuccessful bail applications the appellant was eventually released on bail on 19 September 2011. However – and what is particularly pertinent to this appeal – no progress has since been made by the UKBA in obtaining an ETD from the Algerian Embassy.

6. On 30 July 2012 an application was made on behalf of the appellant to revoke the deportation order and to grant him a period of leave to remain in the United Kingdom on the grounds that it was unlikely that he would be issued with an ETD by the Algerian Embassy and removed from the United Kingdom

and that he had established a private life here. The appellant's representatives submitted two psychiatric reports in support of the application to revoke the deportation order.

7. The UKBA then re-submitted the appellant's ETD application to the Algerian High Commission on 14 January 2013. On 18 February 2013 a decision was made to refuse to revoke the deportation order.

8. The respondent, in making that decision, concluded that any interference with the appellant's private life as a result of his deportation would not be disproportionate or in breach of Article 8 of the ECHR. With regard to the lack of progress with his ETD application the respondent considered that the appellant had contributed to the delay as a result of absconding for over two years. His case was not considered to fall within the "legacy" scheme. The respondent considered that paragraph 398 of the immigration rules did not apply to the appellant and that there were no exceptional circumstances outweighing the public interest in his deportation.

### **Appeal before the First-tier Tribunal**

9. The appellant's appeal against that decision was heard in the First-tier Tribunal on 10 October 2013, before a panel consisting of First-tier Tribunal Judge Elliman and Mrs A Cross De Chavannes. The appellant did not give oral evidence as he had been deemed unfit to do so by Professor Katona who had prepared two psychiatric reports for him. The panel concluded that the situation of "limbo" in which the appellant found himself as a result of the respondent's inability to obtain an ETD from the Algerian Embassy and to remove him to Algeria undermined his physical and moral integrity and resulted in a breach of his right to a private life under Article 8 of the ECHR. They accordingly allowed the appeal on human rights grounds, considering that it was open to the respondent to grant him a period of discretionary leave and accordingly "mitigate the extent of the interference with the appellant's private life whilst at the same time maintaining control over his immigration status".

10. The respondent sought permission to appeal that decision to the Upper Tribunal on the grounds that the panel had failed to have regard to the immigration rules in making its Article 8 assessment and had failed to provide adequate reasons why it was proportionate to revoke the deportation order when the appellant's circumstances were of his own making.

11. Permission to appeal was granted on 6 November 2013, with respect to the second ground.

### **Appeal before the Upper Tribunal**

12. The appeal came before me on 2 January 2014. The appellant was not present at the hearing. I heard submissions on the error of law.

13. Mr Melvin submitted that the panel had made no findings as to the appellant's exercise of deception to enter the United Kingdom and his actions in absconding from the authorities and thus failing to make himself available for removal to Algeria. Although stating a desire to return to Algeria he had not assisted in his removal since he had failed to provide sufficient information about his family and origins. With regard to the first ground of appeal relating to the immigration rules, Mr Melvin acknowledged that the reasoning at paragraph 97 of the refusal decision was unclear and appeared to accept that paragraph 398 of the rules did not apply in the circumstances. However he maintained that the panel was not entitled to conclude that the public interest was outweighed by the appellant's circumstances, given that he had been provided with a certain level of support. The appellant had failed to demonstrate exceptional circumstances justifying the grant of discretionary leave.

14. Ms Short relied on the Rule 24 response prepared by Mr Blum who had represented the appellant before the First-tier Tribunal. She submitted that it was open to the panel to find that the delay in progress for a mentally ill person was in breach of Article 8. The appellant did not pose a risk to the public. The matter of him having provided vague and inconsistent information was irrelevant, given the respondent's concession before the First-tier Tribunal that his nationality and identity was accepted. The fact that he had absconded made no material difference to the progress of the ETD as the application had been outstanding since 2007 and throughout the period during which he had absconded the respondent was still awaiting a response from the Algerian Embassy. With regard to the first ground, it was accepted that the immigration rules could not be met and in any event they had no application to the appellant's case given the basis upon which it had been presented.

### **Error of Law**

15. I do not consider there to be merit in the first ground of appeal, given the particular and somewhat unusual basis upon which the appellant's application was pursued. It was not the case that the appellant was simply challenging his deportation on the basis of an established private life in the United Kingdom, but on the basis that the situation of limbo in which he found himself as a result of the respondent's inability to remove him was an affront to his physical and moral integrity. That was plainly not a situation envisaged by the rules and indeed that was recognised by the Tribunal at paragraph 18. Furthermore, as Mr Melvin himself acknowledged, the reasons for refusal letter of 18 February 2013, at paragraph 97, appeared to accept that paragraph 398 did not apply in the circumstances, although the reasoning was not entirely clear.

16. However, I consider that the second ground of appeal does have merit and discloses errors of law in the Tribunal's determination such that it must, in my view, be set aside. At paragraphs 2 and 3 of its determination the Tribunal, in recounting the history of the attempts made by the respondent to obtain an ETD, refers to the appellant's unlawful entry to the United Kingdom, his failure to report and identification as an absconder and the conflicting information he

was considered to have given as to his personal details and history. However at no point in its findings did the Tribunal appear to give any consideration to the weight to be attached to these plainly material matters and indeed appeared to ignore them completely. I refer in particular to the comments made by the Tribunal at paragraph 17:

“...this is a situation that he has not contrived himself as he has been trying since 2007 to co-operate with the returns procedure and so to effect his return to Algeria. For six years the appellant has been living in circumstances that are not of his own choosing...”

17. That conclusion appears to have been reached by the Tribunal in isolation, without any assessment of the facts, the evidence and the allegations made by the respondent in the refusal letter. It is submitted on behalf of the appellant that such matters were immaterial, given the respondent's acceptance of his identity and nationality and given that efforts continued to be made, throughout the period during which he had absconded, to obtain the ETD from the Algerian Embassy. However, I consider this to be an over-simplistic view which fails to take full account of the evidence.

18. Whilst it may have been the case, as recorded at paragraph 13 of the determination, that the presenting officer confirmed at the hearing that the appellant's identity and nationality was accepted, that does not in my view amount to anything more than an acceptance that his name and nationality were as claimed. I cannot agree with the suggestion, at paragraph 6 of the rule 24 response, that that amounts to a concession by the respondent that he had given an accurate and genuine account of his family history and background for the purposes of the ETD application. That is particularly so given that the presenting officer, in her submissions, continued to rely on the reasons for refusal which plainly disputed that that was the case. Furthermore, whilst it is the case, as paragraph 9 of the rule 24 response states, that the respondent did not particularise in the reasons for refusal letter the vague and conflicting evidence of the appellant's place of birth, the appellant's own evidence, in his statement of 22 July 2011, referred to various inconsistencies that had been identified and which he proceeded to address. At paragraph 6 he sought to explain differences in the recording of his place of birth; at paragraph 7 he sought to explain why he had failed to mention the name of his primary school; at paragraphs 14 to 16 he addressed inconsistencies in his evidence about his passport, visa and identity card; and at paragraph 17 he referred to false details given in his screening interview of 8 November 2006. The Tribunal did not go on to make any findings in that regard.

19. There were, furthermore, various other inconsistencies in the evidence provided by the appellant himself with respect to the information he provided about his background and origins which, whilst not specifically drawn to the attention of the Tribunal, nevertheless arose from that evidence. Indeed the UKBA case notes recorded, at page 85 of the second appeal bundle, that the information recorded in his screening interview was different to that provided to complete his travel document and the appellant was warned that incorrect information would result in a huge delay to his removal to Algeria. Further, it is

relevant to note that at page 91 of the bundle the appellant informed the immigration official interviewing him for the purposes of completing a new bio-data form that he had been at an orphanage in "Galmo" until the age of three years when he was adopted. That plainly contradicted the information previously given, and indeed that given to his solicitors and included in their letter to the Algerian Embassy at page 64 of the appeal bundle, that he had resided from birth with his natural parents in their family home in Jijel. It also clear impacted on the enquiries made through "One World Research", whereby efforts were made to locate his birth certificate in the municipality assembly offices in the vicinity of his family home.

20. In addition, the case notes at page 87 record the appellant's explanation for a lack of documentation being that his parents had died when he was young following which he was looked after by family. Again that contradicted his evidence in his statement that he had lived at home with his parents until leaving for Algiers when he reached the age for military service (paragraph 8 of his first statement), that after 2009 he had asked someone to search for his parents in Algeria (paragraph 21 of that statement) and in Wilson Solicitor's letter of 9 September 2011 that his parents' whereabouts were unknown (pages 63 and 64). A further explanation offered by the appellant for his lack of documentation, as recorded in the UKBA case notes at page 93, was that he had been away from Algeria for over 15 years, yet in his screening interview he claimed to have left Algeria in 2003. In addition, the enquiries made by Wilson Solicitors to the Algerian Embassy also included details of his primary school, as mentioned in his statement of 22 July 2011, yet the appellant told Professor Katona, as recorded at paragraph 2.3 of his report of 23 January 2013, that he did not attend school. Furthermore, Wilson Solicitors' enquiry to the Algerian Embassy confirmed that the appellant held no documentary evidence of his identity, yet it appears from the UKBA case notes that he had admitted in March 2007 to having held an Algerian DVLC (which I assume to be a driving licence). There is no record of him having produced that document despite being asked to do so. Clearly such matters compromise the enquiries made and undermine the weight to be attached to the outcome, or lack thereof, of those enquiries.

21. As I have said, these were not matters which appear to have been specifically referred to by the respondent before the Tribunal. Nevertheless they arose from the evidence relied upon by the appellant himself and the Tribunal had been put on notice that the respondent was relying upon inconsistencies in the information he had provided. In any event it was, at the very least, incumbent upon the Tribunal to enquire further about those inconsistencies referred to at paragraph 50 of the refusal letter and to make findings on the explanations given by the appellant for the inconsistencies he had himself identified in his statement. This it failed to do and in so doing it plainly erred by making the bare assertion that it did at paragraph 17 of its determination that the appellant had been trying to co-operate with the returns procedure since 2007.

22. With regard to the period during which the appellant absconded, it is submitted in the rule 24 response that that was irrelevant to the lack of progress made in regard to the ETD since the UKBA continued to contact the Algerian Embassy throughout that period. However the fact that the appellant failed to report to the United Kingdom authorities for over two years is plainly relevant to the appellant's intentions as regards assisting the removals process and demonstrates a failure to co-operate with the authorities in that regard, whether or not enquiries continued to be made in his absence. In any event the case notes at pages 96 to 98 of the appeal bundle indicate that contact by the UKBA with the Algerian Embassy ceased once the appellant was listed as an absconder and that the ETD application had to be re-submitted in 2010 once the appellant was re-detained. The rule 24 response, at paragraph 10, relies upon references in those case notes to contact with the Embassy on 13 March 2008 and 2 April 2008, but that clearly pre-dated absconder action being taken. Accordingly, the appellant's absence cannot be said to have been irrelevant to the ETD application process, particularly in light of the progress that appeared to have been made prior to him absconding. Of particular note is the fact that the appellant made no attempt, in either of his statements, to explain his behaviour or to provide reasons for failing to co-operate with the authorities. Neither was that matter addressed in Professor Katona's reports. The finding of the Tribunal, that he had been trying since 2007 to co-operate with the returns procedure cannot, in the light of such behaviour, be considered to be a sustainable one.

23. In all of these circumstances I consider that the Tribunal materially erred in law by failing, in concluding that the appellant's status of being "in limbo", and the resulting hardships emanating from that, were in breach of his human rights, to take account of material matters which, at the very least, indicated that he had contributed to that status. There was nothing in Professor Katona's reports that entitled the Tribunal to reach such a conclusion and certainly that was not the basis upon which it approached his reports. In such circumstances the Tribunal's decision cannot stand and has to be set aside and re-made.

### **Re-making the Decision**

24. Mr Melvin submitted that, in the event that the First-tier Tribunal's decision was set aside for error of law, it would be helpful for further submissions to be made on the application of the new rules, but otherwise the decision could be re-made on the evidence available. Ms Short, however, was content for the decision to be re-made on the information available. She confirmed that there was no new evidence requiring a further hearing and nothing further to submit. Accordingly, and given that the error of law arises out of the second ground of appeal, I have proceeded to re-make the decision on the evidence already available.

25. For the reasons I have already given I do not accept that the appellant's situation has been outside his control but consider that he significantly contributed to it by providing inconsistent information about his origins and family and by failing to co-operate with the authorities. Whilst there is

evidence, as referred to in the written representations from Wilson Solicitors LLP dated 30 July 2012, at section M of the respondent's appeal bundle, of problems in obtaining ETDs from the Algerian authorities, it cannot be said that it is their actions alone that have contributed to the appellant's current situation. Neither can it be said that there has been several years of lack of progress, since 2007, given that efforts to pursue the ETD appeared to have lapsed when the appellant absconded and were pursued again after 2010. Clearly, as the UKBA case-notes show, the UKBA have where possible made continuous and regular efforts to obtain an ETD in order to remove him, including arranging interviews with the Algerian Consulate and ongoing requests to the appellant himself for further information which he claimed to be unable to give.

26. Whilst it is indeed the case that, other than the period during which he absconded, the appellant appears on the face of it to have been compliant in the documentation process by taking part in interviews, the evidence before me strongly suggests that the information he was offering was either incorrect or deliberately inadequate. Likewise, whilst there is evidence of commendable efforts being made by his solicitors to assist the removals process, either directly with the Algerian Embassy (pages 61 to 64 of the second appeal bundle), or through other agencies such as One World Research (pages 51 to 56) and the British Red Cross (pages 65 and 66), it seems that those efforts were based on inaccurate information provided by the appellant and were accordingly not surprisingly unsuccessful.

27. I have given careful consideration to the medical evidence, including the two psychiatric reports from Professor Katona. I note from the letters at pages 38 to 46 of the second appeal bundle that the appellant failed to attend appointments with the NHS mental health services between July 2012 and April 2013, although the documentary evidence in the first appeal bundle refers to appointments previously attended whilst he was detained. With regard to the reports from Professor Katona, it appears from Wilson Solicitors' letter of 21 November 2012 at page S1 of the respondent's appeal bundle that the purpose of the reports (or at least the first report) was to raise compassionate circumstances in relation to the deportation proceedings. It is not claimed that his mental health would be grounds for permitting him to remain in the United Kingdom, but the reports are relied upon to support his case as to the circumstances in which he finds himself in the United Kingdom as a result of the respondent's inability to remove him. However I consider there to be nothing in the reports to detract from the findings I have made above. Although the reports refer to depression, cognitive impairment and PTSD, such diagnoses do not provide an adequate explanation for the appellant's behaviour in undermining the removals process. In any event, given Professor Katona's express statement at paragraph 1.3 of both reports, that the information was based partly upon the history provided by the appellant, the observations I have made about the appellant's behaviour and intentions clearly undermine the weight to be attached to the conclusions in the reports.



28. In the circumstances, whilst the appellant may have established some sort of private life in the United Kingdom given the number of years spent in this country, any interference with that private life, when considered in the light of my findings above and given the appellant's stated (although perhaps not so genuine) desire to be removed to Algeria, cannot be said to be disproportionate to the public interest in his deportation. Whilst, as already stated, his circumstances do not give rise to the usual considerations under the immigration rules, there is in any event nothing exceptional, in terms of the rules in those circumstances. The respondent's decision was, in my view, in accordance with the terms of paragraph 390 of the rules. The appellant came to the United Kingdom illegally, he sought to enter using deception, he continued to provide the United Kingdom authorities with inconsistent information and he has failed to provide genuine assistance to the removals process. His claim to have no remaining ties to Algeria is not a believable one, given the contradictory information he has provided about his family and origins. He has expressly stated that he does not fear return to Algeria, but on the contrary has repeatedly expressed a desire to return there. There is no evidence to suggest that he would be unable to receive treatment in Algeria for any psychiatric problems that he has. His situation is largely one of his own making and I do not accept that his physical and moral integrity is undermined by his current circumstances to the extent that the decision to maintain the deportation order and to continue to seek his deportation could be considered as being disproportionate and in breach of his Article 8 human rights.

## **DECISION**

29. The making of the decision of the First-tier Tribunal involved an error on a point of law. The Secretary of State's appeal is accordingly allowed and the decision of the First-tier Tribunal is set aside. I re-make the decision by dismissing Mr Mabrouk's appeal on all grounds.

Signed  
Upper Tribunal Judge Kebede