



**Upper Tribunal  
Immigration and Asylum Chamber  
DA/00730/2013**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 August 2014**

**Determination  
Promulgated  
On 5 August 2014**

**Before**

**Upper Tribunal Judge Kekić**

**Between**

**L A  
(anonymity order made)**

**Appellant**

**and**

**Secretary of State for the  
Home Department**

**Respondent**

**Determination and Reasons**

**Representation**

For the Appellant: Ms G Loughran, Counsel  
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**Background**

1. This appeal comes before me following the grant of permission on 11 June 2014 to the respondent by First-tier Tribunal Judge Astle in respect of the determination of First-tier Tribunal Judge Kamara who allowed this deportation appeal by way of a determination promulgated on 22 May 2014. For convenience I continue to refer to the Secretary of State as the respondent and to L A as the appellant.
2. The appellant is a citizen of Algeria born on 4 September 1967. He arrived in the UK in June 2007 and applied for asylum in August 2007. His application was refused and his appeal was dismissed in March 2011. Meanwhile, the appellant began offending in 2008 and has five convictions. The last was in August 2010 when he received a four month sentence for two counts of assault with intent to resist arrest. A deportation order was signed on 14 April 2011 and on 1 June 2012 the appellant made a fresh asylum claim. That has led to these proceedings.
3. The criticism of the judge is that in accepting that the appellant was gay, she failed to take account of the fact that he had made no mention of his sexuality in his previous asylum claim and that had she done so, her other findings on credibility would have been affected. It is argued that the appellant's circumstances do not meet the very high Article 3 threshold in health cases. Reliance is placed on N (Uganda) [2008] ECHR and D [1997] 24 EHRR, that he has family in Algeria and that on return he would be in the same position as any other mental health patient. The grounds point out that the requirements of the rules have not been met and that it is only in exceptional cases that the public interest would be outweighed by other factors; the appellant's residence of 7 years, the presence of two siblings, and the receipt of health care, were not considered to be exceptional factors. It is pointed out that the appellant has not been entitled to receive health care and that, whilst treatment in Algeria may not be of the same standard, facilities are available. Reliance is placed upon the case of Nasim (Article 8) [2014] UKUT 00025 (IAC). Finally, it is argued that the public interest had not been properly balanced against the appellant's circumstances.

### **Appeal hearing**

4. At the hearing I heard submissions from the parties. The appellant was present.
5. Mr Walker relied upon the respondent's grounds. He submitted that when assessing the appellant's claim of homosexuality, the judge had failed to take account of the appellant's failure to have mentioned his sexuality during the course of his previous applications. He submitted that the judge failed to say why the appellant's circumstances were exceptional and failed to properly

deal with the public interest factors. Had she done so, the appeal would have been dismissed and had the homosexuality issue been properly addressed this would have impacted upon his claim of involvement with the Patriots.

6. Ms Loughran submitted that the only point the Secretary of State raised with respect to credibility was the appellant's failure to previously mention his sexuality. She submitted that the appellant had given an explanation for this when he stated in his witness statement that by mentioning his rape, he assumed the respondent would realise he was gay. She stated that the judge had summarised the deportation letter noting the absence of a previous reliance upon sexuality. The Tribunal found that the appellant had been candid in his evidence. Ms Loughran took me through the positive credibility findings and pointed out that none of these had been challenged. There was a great deal of medical evidence before the panel which the previous Tribunals had not seen. The panel was entitled to find as it did. The respondent had misunderstood the Tribunal's reasoning with regard to the 'medical grounds'. This was not an N or D type case; this was a case involving the risk of suicide and the judge properly looked to J [2006] EWCA Civ 1238 for guidance and followed the appropriate steps. There was also a misunderstanding with respect to Nasim; in the present case the Tribunal found that there was interference with the appellant's moral and physical integrity because of the risk of suicide. The public interest factors had been fully considered. The panel considered N (Uganda) and Uner, properly identified the public interest elements and properly directed itself. In that context it undertook a balancing exercise and applied those factors to the appellant's case. It took account of the fact that there was no evidence to show that the appellant was at a continued risk of reoffending. It considered the sentencing judge's remarks and found that the case was exceptional because of the suicide risk. The determination was detailed and well reasoned. All the correct cases were identified. None of the findings on political activities were challenged by the Secretary of State.
7. Mr Walker did not wish to respond.
8. At the conclusion of the hearing I reserved my determination which I now give.

### **Findings and conclusions**

9. Had the claim of homosexuality been the main thrust of the appellant's appeal, then it would be a matter of concern that the failure to make previous mention of it during the course of two previous asylum applications and appeals had not been specifically

considered by Judge Kamara. Whilst I accept this is mentioned in paragraph 14 when summarising the deportation letter, there is no further attempt to resolve the conflict. Although Ms Loughran maintained he had never been asked about his sexuality before, that, with respect, does not address the issue at all. In the absence of any indication of homosexuality, there would have been no reason for any questions about such personal matters to have been put. Further, the appellant's 'explanation' of this omission, that he assumed the Secretary of State would know he was gay from the fact he had been raped at 14, was not considered either and it has to be said it is a very odd explanation. I fully accept that judges are not required to consider every issue but this was a major plank of the appellant's claim and so it should have been better addressed.

10. Notwithstanding that defect in the determination, the judge heard evidence from the appellant and found him to be fully credible in all aspects of his claim (paragraph 24). She made detailed findings in respect of the other elements of the appellant's claim, none of which have been challenged by the Secretary of State. Those findings are set out at paragraphs 24-28. The judge found that it was reasonably likely that the appellant would be detained on return in relation to a military Tribunal proceedings (paragraph 25), that he was wanted by the authorities in order to answer questions regarding the ten suspected terrorists he apprehended (*ibid*), that his act of leaving the country would be perceived as anti-government (*ibid*), that he would be at risk of harm from the families of the ten suspected terrorists (paragraph 26) and that he would be unable to avail himself of protection because of the adverse interest in him by the authorities (paragraph 27). On account of the appellant's political activities in Algeria, the judge arrived at a conclusion that was supported by the evidence and which had been fully reasoned. On that basis, alone the refugee claim is made out. The argument in the grounds that the fact that the appellant had lied about his sexuality might impact upon these findings was not pursued by Mr Walker.
11. With respect to the appellant's mental health, Ms Loughran is correct to point out that N and D do not deal with cases of suicide and so they are not relevant to the issues here. The judge undertook a proper assessment of J and was entitled to conclude that the appellant's Article 3 rights would be breached due to his risk of suicide.
12. Challenge was made to the judge's approach to exceptional circumstances. As pointed out by Ms Loughran, however, the Secretary of State has not sought to challenge that there would be a real risk of serious harm to the appellant from the authorities and

from the families of the suspected terrorists. That added to the suicide risk, means that deportation would be unjustifiably harsh.

13. Detailed consideration was given to the public interest elements. OH (Serbia) was considered and the weighty public policy factors were set out in paragraph 33. N (Kenya) and Uner are addressed at paragraphs 31 and 32. The panel noted that the appellant's offending was at the lower end of the scale, that he had not offended further and there was nothing to suggest a continued risk of re-offending. It also noted the circumstances of the index offence (paragraphs 35-36).
14. In conclusion, therefore, I find that the Tribunal reached a sustainable conclusion and that its findings as a whole are not vitiated by the failure to specifically address the conflict in the evidence over the appellant's sexuality.

### **Decision**

15. The determination of the First-tier Tribunal allowing the appeal of the appellant on refugee and human rights grounds is upheld.

### **Anonymity**

16. The order for anonymity made by the First-tier Tribunal is continued.

**Signed:**

**Dr R Kekić  
Judge of the Upper Tribunal**

**4 August 2014**