



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/33492/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 12 October 2017

Decision & Reasons Promulgated  
On 21 November 2017

Before

THE HON. LORD BURNS  
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)  
UPPER TRIBUNAL JUDGE GILLIAN JACKSON

Between

YD  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Hooper, Counsel instructed by Bindmans LLP

For the Respondent: Mr S Kotas Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Algeria born 3 January 1997. He arrived in the United Kingdom in July 2012 as an unaccompanied minor. He claimed asylum on 18 July 2012 on the basis that he feared persecution if returned to Algeria on the basis of his sexual orientation.
2. On arrival he gave an account that he had been brought up by his aunt and uncle, his parents having died in a car crash when he was 6 years of age. His uncle was violent

towards him. The relationship subsequently broke down so that the appellant had to leave his uncle's house and live on the street. After some months he moved in with the family of a boy whom he met. However, the boy's mother discovered the appellant and the boy having sex and the appellant returned to live on the streets. He was told by his youngest cousin that the boy's mother had informed the appellant's uncle, who wanted to kill him. He fled via Spain to the United Kingdom.

3. The appellant's asylum application was refused on 8 July 2013. Due to his age he was granted leave to remain for under 12 months. In June 2014 he made an application for further leave to remain which was refused on 13 October 2015 with a right of appeal on both asylum and human rights grounds. He lodged an appeal on 26 October 2015.
4. The appeal came before the First-tier Tribunal judge (the judge) for a hearing on 13 October 2016 who dismissed the appeal by decision promulgated on 16 November 2016.
5. The judge heard evidence from the appellant himself and a witness HH who had been in a relationship with the appellant for about two years. They lived at separate addresses.
6. The judge found that both the appellant and HH were credible regarding their sexual orientation and relationship. He also found the appellant credible in relation to the reasons why he fled from Algeria. The judge found that there would be a real risk to the appellant of violent and persecutory ill treatment from the appellant's uncle and from the parents of the boy with whom he had relationship in Algeria. However, the judge, applying the Country Guidance case *00 (Algeria)* [2016] UK UT 0 0065 (IAC) found that the appellant would not be at risk on return to Algeria because he could relocate within that country without suffering persecution. The appellant appealed that decision to the Upper Tribunal.
7. Before us, Miss Hooper advanced five broad grounds of appeal. The first contends that the judge materially erred in law in misapplying the judgment of the Supreme Court in *HJ (Iran)* 2010 UKSC 31 and in failing to address argument that *00 (Algeria)* was wrongly decided. Secondly, it is contended that the judge erred in applying that case despite evidence presented which cast doubt on the safety of that guidance. Thirdly it is said that the judge erred in the manner in which he approached the relationship between the appellant and his partner HH. Fourthly he erred in finding there were no particular circumstances that would make internal relocation unreasonable or unduly harsh. Fifthly it is said that the judge erred in finding there were no significant obstacles to the appellant's reintegration in Algeria and that there were no compelling circumstances to consider his case on Article 8 grounds outside the Rules.

## Ground 1

8. The first ground in effect is a challenge to the Country Guidance case 00 (Algeria). However, as Mr Kotas submitted, the judge was obliged to follow that guidance unless very strong grounds supported by cogent evidence were adduced justifying departure from it (see SG Iraq and SSHD 2012 EWCA Civ 940 paragraph 47). We do not consider that in failing to depart from 00 (Algeria) the judge can be said to have materially erred in law. We note that it is a recent case having been decided in September 2015 and that no appeal was taken against it. The Tribunal heard extensive expert and other evidence about the conditions in Algeria which was subjected to detailed analysis and assessment resulting in the guidance set out in paragraphs 171–190. We deal with the contention in Ground of Appeal 2 that there was evidence casting doubt on the safety of that guidance below. In essence we do not consider that there was any evidence that would warrant the judge departing from 00 (Algeria).
9. At the heart of the criticism of the Tribunal's decision in 00 (Algeria) is the contention that the Tribunal applied too narrow a definition of persecution. It is said that self-repression of sexual orientation as a reaction to social stigma, ostracism and discrimination can amount to persecution or a violation of human rights. So, if applicants for asylum require, for their own protection against such reactions, to exercise self-restraint by avoiding behaviour which would identify sexual orientation, that is capable of constituting persecution. Reference is made to what Lord Roger said at paragraph 78 of HJ (Iran) that what is protected is the right of gay people to be as free as their straight equivalents to live their lives in the way that is natural to them, without the fear of persecution.
10. We do not consider these criticisms to be well-founded. The Tribunal had full regard to the Supreme Court's decision in HJ (Iran). The Supreme Court highlighted a distinction to be made when considering the question whether someone living discreetly as a gay person amounts to persecution. Social pressures do not amount to persecution and the convention does not offer protection against them. However, as stated at paragraph 82, if a material reason for the applicant living discreetly on his return would be a fear of persecution which would follow if he were to live openly as a gay man then the application should be accepted. There is nothing in 00 (Algeria) that runs contrary to that approach. The Tribunal carefully assessed the evidence and found that it was not established that gay people in Algeria would be subjected to any harm of sufficient intensity and duration capable of amounting to persecution. Further, it found, upon the evidence advanced to it, that gay people in Algeria generally do not live openly as such and, for example, do not show affection in public, not only because of social pressures but because in that country such public manifestations are disapproved of, whether conducted by heterosexual or homosexual couples. Thus restraints are imposed in Algeria on straight people as well as gays. Ms Hooper argued that homosexual couples are required to deny the fact and nature of their relationships and to lie about their sexual identity or their

partner unlike heterosexual couples and that “living discretely” in that sense together with the discrimination and harm which the Tribunal found to exist against gays in Algeria amounted to persecution. Lord Hope of Craighead referred at paragraph 12 of *HJ (Iran)* to article 9(1)(a) of the Qualification Directive which states that acts of persecution must be “sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights”. The Tribunal set out at paragraph 10 that definition of persecution contained in the Directive and proceeded to consider all the evidence as to the ways in which gay people are treated in Algeria. It concluded that the evidence of that treatment whether by the State or by others could not constitute such violations. Thus no “fear of persecution” could be said to exist. We agree with the analysis. We reject the contention that the Tribunal’s own findings as to the sort of responses to which gays may be subjected in Algeria can be said to amount to persecution. This amounts to disapproval, the threat of prosecution, ill-treatment at the hands of family members, and adverse reaction from certain sectors of the public including the possibility of physical attack. On the evidence presented to it, the Tribunal’s approach cannot be said to be erroneous. That judgement was one reached after careful scrutiny of the evidence which the Tribunal heard and we are not prepared to depart from it.

11. The Upper Tribunal also dealt with the argument advanced before them based upon what was said in *XYZ v Minister Voor Immigratie En Asiel* (Case C-199/12 2 C 201/12) paragraphs 70 and 71. This is repeated in this ground of appeal. At paragraph 14 the Upper Tribunal rejected the argument that the Court of Justice of the European Union had gone further than the Supreme Court in *HJ (Iran)* in stating that the requirement to conceal sexual orientation could in itself amount to persecution. As the Tribunal pointed out, the CJEU made it plain that the requirement of persecution remained.

## Ground 2

12. In Ground 2 it is contended that the judge erred in concluding that there was no reliable evidence to establish that a gay man, identified as such, faces a real risk of persecutory ill treatment from persons outside his own family. This ground is again predicated on the contention that *OO (Algeria)* was wrongly decided but reference is made to certain evidence said to postdate it which ought to have led the judge to depart from it. The first is the *Country Information and Guidance Algeria: Sexual Orientation and Gender Identity* of February 2016 issued by the Home Office (pages 26-68 of the appellant’s bundle). The material referred to at pages 39 and 41 predates the Tribunal’s determination. While there are some references later in that document which postdate the Tribunal’s decision, there is nothing in these that would constitute the sort of cogent evidence justifying any departure from the Country Guidance. The skeleton argument at paragraph 44 draws attention to the document relied on for evidence in paragraph 7.1.3 of this document which sets out the

punishments for criminal offences including homosexual acts in the Penal Code. Paragraph 7.1.3 states that a journalist wrote an article in August 2014 in which it was reported:

“Not only is it possible to live a homosexual life, with its meeting places, bars and cabarets in Algiers, Oran and Bejaia, but many Algerian homosexuals practice homosexuality; at school, during military service and in the dorm etc.”

The article being referred to is entitled “*Sex, youth and politics in Algeria*” and starts with a quote from a lesbian resident of Oran who said:

“*The lives of homosexuals are much more simple and joyful in Algeria*”.

The author goes on to state that:

“*dating opportunities and homosexual pleasures are far more numerous*”

Views to this effect support the findings of the Tribunal in *OO (Algeria)*.

13. Reference is also made to the *Country Reports on Human Rights Practices* for 2015 from the United States Department of State. However this does not differ materially the previous year’s report which was before the Tribunal. Indeed there is an addition in the 2015 report to the effect that “activists said that the government did not actively condemn LGBTI behaviour” although it is said to be complicit in the hate speech propagated by conservative and religious organisations.
14. Reference is also made to the document entitled “*Violations against LGBTIQ in Algeria*” at page 199 and 214 of the appellant’s bundle. This is an undated document but must have been issued sometime prior to October 2016 since it states that that is when their next report is due. Its main purpose, according to the introduction and context is to document violations and hate speech in written and audio visual media outlets or as spoken by political, religious or artistic public figures. The report due in October 2016 will, it states, focus on the translation of these expressions into acts of violence. No such report of October 2016 was supplied to us. In any event there is reference at page 210 to a YouTube and Facebook video which was uploaded 16 November 2015. The date of the incident is not recorded. The video is said to show a violent verbal and physical assault on an Algerian transgender woman who was taken by two individuals in a car and intentionally dropped in a working class neighbourhood and was subjected to insults, blows and spitting in her face.
15. At paragraph 162 of *OO (Algeria)* the Tribunal acknowledged that such physical attacks cannot be excluded. They point out that there is a dearth of information and evidence relating to such attacks. We do not consider that the existence of a video

apparently uploaded in November 2015 which shows an incident about which there is no further detail justifies a departure from Country Guidance.

16. A further branch of this ground maintains that the judge erred in finding that, if the appellant chose to live discreetly in Algeria that would be because of respect to social laws and a desire to avoid attracting disapproval all of which fell below the threshold for persecution. It is contended that the appellant's case was that he would be forced to act discreetly because otherwise he would be in danger. However, the Tribunal in *OO(Algeria)* had found that any risk of danger which the people in the appellant's situation would face fell below the threshold for persecution. We do not consider the judge erred in this respect.

### **Grounds 3 and 5**

17. Ground 3 contends that the judge erred at paragraph 27 in assessing the effect of the appellant's relationship with his partner HH. It is accepted they do not live together but it is said that his partner, who is British, would not leave the UK to live with the appellant in Algeria so the relationship would be severed. Both are young and it is not in any event financially or practically viable for them to live together at the current time. HH's family do not know that he is gay. In her skeleton argument, Ms Hooper submits that the break up of this relationship and the inability to conduct such a relationship in Algeria would constitute very significant obstacles in his reintegration there. This factor is linked to the judge's treatment of the appellant's private life at paragraphs 27 and 30 and raised in ground of appeal 5. It is said that the interference with the appellant's private life was a factor "militating against his removal".
18. It is clear from the appellant's witness statement dated 6 October 2016 at paragraph 5 that he and HH had only known each other for 1½ to 2 years. They were at the time no longer a couple but continued to have a casual sexual relationship. In these circumstances it cannot be said that the appellant's relationship with HH was a material consideration in the assessment of the private life of the appellant which the judge was considering at paragraph 27. It was accepted that the appellant had some private life within the UK but, as is acknowledged in the grounds of appeal at paragraph 8, the private life developed in this regard while his leave to remain in the United Kingdom was precarious. We do not consider any material error of law is demonstrated in this respect.
19. Ground of appeal 5 contends that the judge erred in finding that there would be no very significant obstacles to his reintegration into Algeria in terms of Rule 276ADE. The appellant would not be able to continue his relationship with HH. He cannot return to his family, Algerian laws declare homosexuality illegal, he is likely to be homeless on return and will face discrimination in obtaining employment. At

paragraph 27 the judge points out that the appellant and HH are not living together in the UK and there is no basis for supposing they would do so in Algeria. The factors listed in paragraph 50 of Ms Hooper's skeleton argument are not specifically dealt with but there is no obligation on the judge to set out all such considerations. At paragraph 30 he refers to the findings made in applying the country guidance as the basis for concluding that no very significant obstacles would arise in re-integration. Those include the finding that the appellant would not live openly as a gay person for reasons other than a fear of persecution. He had also found that the appellant was capable of adapting to life in Algeria (see our discussion below on ground of appeal 4). We do not accept that the judge's treatment of the appellant's claim under Rule 276ADE discloses any error of law. Ms Hooper also argued that the judge's treatment of the appellant's position outside the Rules was defective in failing to have regard to these considerations. The judge specifically considered whether there were any compelling circumstances which might justify finding a breach of his Convention rights outwith the rules at paragraph 31. He found none. We consider that he dealt with all the applicable and relevant considerations which arose in the context of the appellant's Convention rights in his assessment of the appellant's case prior to this point and that he made no error of law in concluding that there were no residual compelling circumstances which would amount to any disproportionate interference with those rights.

#### **Ground 4**

20. Ground 4 contends that the judge erred in finding that it would not be unduly harsh for the appellant to relocate internally within Algeria. The first reason given is that, since the appellant would have to suppress or conceal his sexual orientation wherever he lived in Algeria that would necessarily make relocation unreasonable or unduly harsh. However, that is contrary to what the Tribunal found in 00 (Algeria). Secondly it is said that there was no evidential basis for the finding at paragraph 30 that the appellant could adapt to any place he decided to relocate to. The judge states at paragraph 30 that the appellant had now been in the UK for 4 years and had a way of life which would enable him to do so adapt. This is against the background that the appellant had been born and brought up in Algeria and had not left that country until he was 15. Since arriving in Britain 4 years ago, he had completed a hairdressing course and gained experience in hairdressing salons. He had thus not only lived independently in a foreign country for a significant period of time during his formative years but had demonstrated self-reliance and initiative. Upon the evidence before him the judge was entitled to come to the view that there was nothing in the appellant's circumstances which would make relocation in Algeria unduly harsh.

#### **Notice of Decision**

The Appellant's appeal is dismissed.

Sitting as a Judge of the Upper Tribunal  
(Immigration and Asylum Chamber)

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

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 or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.