



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

Appeal Number: PA/05356/2016

THE IMMIGRATION ACTS

Heard at Bradford Magistrates' Court
On 31 July 2017

Decision & Reasons Promulgated
On 14 August 2017

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**MN
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, MN, was born in 1997 and is a citizen of Algeria. He arrived in the United Kingdom in November 2014 and applied for asylum. By a decision dated 16 May 2016, the respondent refused to grant him asylum. The appellant appealed to the First-tier Tribunal (Judge Shimmin) which, in

a decision promulgated on 28 March 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant appeared in person before the First-tier Tribunal and the Upper Tribunal. His manuscript grounds of appeal are lengthy and somewhat difficult to read. However, the appellant did not disagree with me when I put it to him that the appeal grounds were as summarised by Judge Ford who granted permission on 4 May 2017 at [3]:

It is arguable that the Tribunal may have erred in:

- (a) not adequately assessing the evidence concerning the appellant's claim to be gay. The assessment takes up one short paragraph [37] and simply adopts the respondent's submissions;
- (b) not treating the appellant as a vulnerable witness;
- (c) proceeding in the absence of an up-to-date psychiatric report. Given that the appellant was not represented as at date of CMR, it is arguable that the Home Office owed him a duty of care to ensure that such an assessment was provided;
- (d) making no findings on humanitarian protection issues given the appellant's vulnerability;
- (e) failing to undertake in the Article 8 assessment.

3. The appellant had the benefit of an interpreter (North African Arabic) at the Upper Tribunal hearing although he chose to make his submissions in English. I listened carefully to what the appellant had to say and considered also the oral submissions of the representative for the Home Office, Mrs Pettersen. I then reserved my decision.

4. The appellant's claim before the First-tier Tribunal was that his father had been murdered. Judge Shimmin rejected that claim finding that the appellant had "failed to substantiate that anyone is seeking to harm him in Algeria" [35]. As regards the appellant's sexuality, Judge Shimmin found [37] that:

In the appellant's asylum interview he was given many opportunities to explain his sexuality and his claimed relationship but he was vague. I find that the appellant has failed to establish, even to the lower standard, that he is homosexual.

5. Whilst I acknowledge that the judge's finding is briefly reasoned, I agree with the respondent's submission (set out in the Rule 24 statement of 25 May 2017) the judge could have added little more given the "limited evidence regarding the appellant's sexuality". There is no suggestion that the judge has failed to consider the totality of the evidence or that he has given inappropriate weight to any particular item of evidence. It was the judge's task to carry out a robust fact-finding exercise on the basis of the evidence which he had before him. I have no doubt that Judge Shimmin

has carried out such an exercise. Plainly, he reached a finding which was available to him on that evidence.

6. As regards the appellant's claimed vulnerability, Judge Shimmin wrote [30]:

When giving evidence the appellant appeared clear cogent and composed. It was obvious to me that he understood much of the English spoken in the hearing and also understood the interpreter. The medical documents before me indicate that he suffers from seizures and psychotic behaviour. These appeared to be controlled by medication. In assessing the appellant's evidence I have taken into account his medical condition and made an appropriate allowance.

7. I am satisfied that Judge Shimmin did treat the appellant as a vulnerable witness and I have no doubt that he took into account the appellant's medical condition when assessing the evidence. I am satisfied that the judge made every effort to ensure that the appellant could be heard in proceedings which concerned him. Indeed, it is difficult to see what else Judge Shimmin should have done in order to give the appellant a fair hearing. I note that, before the Upper Tribunal, the appellant was composed and spoke rationally and in a measured way. He appeared to have no difficulty expressing himself or remembering what he needed to tell the Tribunal. I am satisfied that the appellant was given every opportunity to put his case both to the First-tier Tribunal and to the Upper Tribunal.
8. Judge Shimmin had before him the medical evidence which the appellant had chosen to adduce. Both before Judge Shimmin and the Upper Tribunal, the appellant was able to explain that he continued to take medication. Before the Upper Tribunal, he explained that this was to control "voices". He told me that, if he took the medication prescribed, he did not hear these "voices". There is no evidence that he receives any other treatment for his condition. Mrs Pettersen, for the respondent, made the valid point that there was no evidence to show that the medication required by the appellant was not available in Algeria.
9. As regards humanitarian protection, the appellant claims that he may suffer deteriorating health in Algeria but he has been unable to establish that he would be unable to access the necessary medication. The appellant's claim to fear the individual (whom he was unable to identify) who had killed his father and his claim that he is at risk in Algeria because he is gay were both rejected by the judge. I find that the appellant has failed to establish that those findings were unsafe. At [43], Judge Shimmin made the very clear finding that the appellant would be able to obtain treatment for his condition in Algeria, relying on the analysis contained in the refusal letter. That analysis is lengthy, and occupies paragraphs [100-114] of the letter. On the basis of the very limited evidence available, the judge's findings were plainly available to him.

10. In summary, I am satisfied that Judge Shimmin did everything that he could to ensure that the appellant had a fair hearing of his appeal. The judge considered such evidence as was available and gave clear and cogent reasons for dismissing the appeal. Other than claiming before the Upper Tribunal that he has no family living in Algeria and that he would find difficulty accessing the necessary medication for his condition (claims which do no more than contradict the findings of the judge) the appellant was unable to offer any reason for the Upper Tribunal to conclude that Judge Shimmin had erred in law. Accordingly, the appeal is dismissed.

Notice of Decision

11. This appeal is dismissed.

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.

Signed

Date 11 August 2017

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 11 August 2017

Upper Tribunal Judge Clive Lane