



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

Appeal Number: PA/03454/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 23 October 2018**

**Decision & Reasons Promulgated
On 02 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**FERROUDJA [Z]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khan of Counsel instructed by Wimbledon Solicitors
For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. This is an appeal against the decision of first-tier Tribunal Judge O'Keefe promulgated on 22 August 2008 dismissing the appeal against a decision of the Respondent dated 12 February 2018 refusing a protection claim. The appeal was dismissed on protection grounds and on human rights grounds.

2. The Appellant is a citizen of Algeria born on 6 December 1965. She arrived in the United Kingdom on 17 September 2002, entering pursuant to entry clearance as a visitor. On 30 September 2002 she claimed asylum. Her application was refused and a subsequent appeal dismissed in a decision promulgated on 1 April 2003 (ref. HX/74165/2002 – see Appendix D of the Respondent’s bundle before the First-tier Tribunal).
3. Nothing further is recorded in respect of the Appellant’s immigration history until March 2010 when the Respondent wrote to her asking for up-to-date information as to her circumstances. Correspondence followed culminating in the Respondent sending the Appellant a ‘no basis to stay’ letter dated 20 March 2011 (Appendix E). A further review of the Appellant’s circumstances was conducted in January 2014 pursuant to the so-called ‘Legacy’ policy, with the Appellant again being informed that she had no basis to stay in the UK (Appendix F). Yet a further review followed in June 2014 with the same outcome (Appendix G).
4. The Appellant then made further submissions via the Respondent’s Further Submissions Unit in Liverpool relying “*on her right to a family life under Article 8 ECHR and her continuing fear of persecution in Algeria*” (letter dated 23 July 2014, Annex H). Further correspondence followed (Annex J).
5. In due course the Appellant’s representations were refused by the Respondent for reasons set out in a ‘reasons for refusal’ letter (‘RFRL’) dated 12 February 2018. Nonetheless the Respondent accepted that the Appellant’s representations relied in part on “*new evidence not previously considered*” (RFRL at paragraph 12), and it was accepted that the further submissions amounted to a fresh claim, the refusal of which attracted a right of appeal.
6. The Appellant appealed to the IAC.
7. The appeal was dismissed for reasons set out in the Decision of First-tier Tribunal Judge O’Keefe promulgated on 22 August 2018.
8. The Appellant applied for permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Grant-Hutchison on 14 September 2018.

9. Although the Appellant had raise protection issues in her further submissions, and in her appeal before the First-tier Tribunal, the rejection of this aspect of her case has not informed the grant of permission to appeal. Accordingly the issues before the Upper Tribunal are - as the representatives agreed before me - in respect of Article 8 only.

Consideration: Error of Law

10. At the core of the Appellant's Article 8 case is her relationship with Mr Anthony Woods, a British citizen born on 22 July 1964. It was the Appellant's case before the First-tier Tribunal that there were insurmountable obstacles to family life between her and Mr Woods continuing in Algeria. In support of this case the Appellant placed reliance in particular - although not exclusively - on a country expert report prepared by Dr David Seddon dated 19 July 2018 (Appellant's supplementary bundle before the First-tier Tribunal at pages D1-D14).

11. The grant of permission to appeal to the Upper Tribunal is based on it being

"arguable that the Judge has misdirected [her]self by failing to place sufficient weight on the expert report of Dr Seddon with particular reference to the difficulties that the Appellant and her partner could have if they relocated to Algeria considering that the Appellant's partner will not be able to acquire residence in Algeria because he is a British citizen, the fact that he is a Christian and that they would be living together as an unmarried couple".

12. By way of context it may be noted that the Respondent in the RFRL accepted that the Appellant satisfied the 'suitability' requirements under Appendix FM, and accepted that the Appellant was in a genuine and subsisting relationship with Mr Woods. In this regard it was said that the Appellant had not provided satisfactory documentation to demonstrate cohabitation for the two years prior to the date of application in July 2014 (RFRL at paragraph 74); however, it was acknowledged that at the date of the Respondent's decision the couple had lived together since at least 2014 (paragraph 79). It was not disputed the Mr Woods was a British citizen living in the UK.

13. In considering paragraph EX.1 of Appendix FM the RFRL states:

“84. It is noted that you have stated in your personal statement dated 15/07/2014 that your partner Mr Woods could not relocate to Algeria. You claim he would have language difficulties and could not secure employment. You state he is employed as builder in the UK and earns a good income. He also does not want to be separated from his family, he has some health issues and he is a Christian.

85. However, it is considered that Mr Woods is of working age and by your own admission, is currently employed full-time. It is considered that it is not unreasonable for you and your partner to continue your family life together outside the UK. There are no insurmountable obstacles or significant difficulties that would be faced by you or Mr Woods in continuing your family life outside of the UK, that could not be overcome or that would entail very serious hardship to you or Mr Woods.”

14. For completeness I note that the RFRL also considered:

(i) Private life pursuant to paragraph 276ADE(1) of the Immigration Rules but concluded with reference to paragraph 276ADE(1)(vi) that there would not be very significant obstacles to the Appellant’s integration into the country of her nationality.

(ii) That in the event that the Appellant’s removal resulted in an interference with her family and private life, such interference would be proportionate bearing in mind the legitimate aim of maintaining effective immigration control, and the fact that the Appellant’s private life had been established or developed at a time when her immigration status was precarious (paragraph 106);

(iii) That the Appellant had *“failed to maintain contact with Immigration Control for a significant period of almost 8 years, from November 2000 to 208 June 2010”* (paragraph 111). (In this context details of the Appellant’s non-compliance with immigration control was set out at paragraphs 112-119.)

(iv) That the Respondent’s delay of 3 years and 7 months in considering the Appellant’s further submissions was *“not deemed significant when weighed against the 11 years total period when [the Appellant] failed to maintain contact and the delay in lodging [her] further submissions in July 2014 after [her] appeal rights became exhausted in May 2003”* (paragraph 122).

15. The First-tier Tribunal Judge’s consideration of Article 8 is set out at paragraphs 38-53 of the Decision. These paragraphs are a matter of record and accordingly not reproduced here in their entirety: I make reference to them as is incidental for the purposes of considering the Appellant’s challenge.

16. The substance of the challenge in respect of the Judge's conclusions on Article 8, as summarised at paragraph 15 of the grounds in support of the application for permission to appeal, is that the Judge "*materially erred in finding that there are no insurmountable obstacles in the Appellant and Mr Wood relocating to Algeria*". In contrast to the Judge's approach, findings and conclusion, it was argued that the appeal should have succeeded because the evidence demonstrated that Christians are subject to discrimination and harassment; that there was a significant risk that the couple would be subjected to social discrimination as a "*mixed, unmarried couple*"; and in any event "*it is unlikely that Mr Woods would be able to join her because their relationship is not recognised under Algerian law because they [are] not married and he is not Muslim*".
17. With some small element of repetition the substance of these grounds are articulated at paragraph 1-11 of the grounds of challenge; they were further amplified before me by Mr Khan.
18. The Appellant submits that the Judge erred in consideration of the claim that Mr Woods would face discrimination as a Christian in Algeria. The Judge's consideration of this issue is set out at paragraph 42 of the Decision in these terms:

"The appellant said in her statement that the appellant [in context this is clearly an erroneous reference to Mr Woods] would be at risk in Algeria as he was a Christian. I was not provided with any background evidence to support that assertion. Mr Woods candidly said in his evidence that he did not practice his faith although he did identify himself as a Roman Catholic".
19. I note in this context paragraph 10 of the Appellant's witness statement dated 5 April 2018 - "*...his life will be at risk in Algeria as he is a Christian*". Paragraph 4 of Mr Woods statement of 5 April 2018 puts the matter slightly differently: "*I am a Christian and I do not think going to live in a Muslim country as an unmarried couple would be safe for me or my partner and is not tenable*". This passage does not assert a fear of being at risk as a Christian *per se*, but rather a risk arising from being in an unmarried relationship with a Muslim woman.
20. I pause to note that the oral evidence of Mr Woods to the effect that he did not practice his Roman Catholic faith is perhaps reinforced by Mr Woods'

statement at paragraph 4 of his witness statement of 5 April 2018 “...I never believed in marriage, hence getting married will not be an option for me”.

21. Be that as it may, complaint is made that the Judge was in error in stating that she was not provided with any background evidence to support the assertion that Mr Woods would be at risk in Algeria because he was a Christian.
22. In this context my attention was directed to ‘country information’ materials in the Appellant’s bundle before the First-tier Tribunal, and various passages therein providing evidence of hostility towards Christians. However, many of these passages did not seem to be ‘on point’: for example the passages to which I was taken in the Immigration and Refugee Board of Canada response to information requests (C60 of the Appellant’s bundle) was in relation to converts from Islam to Christianity; similarly the reference at C69 to “*the pressure Algerian Christians experience*” appeared to be in the context of conversion because reference was immediately made to “*Intolerance from Muslim relatives...*”. Nonetheless, such evidence indicates a general context of opposition to the Christian faith. That this is not confined to converts appears to be evident from the following passage from the International Religious Freedom Report for 2016: “*Some Christian parents reported their children were reprimanded in school for openness about their religion*” (C84). However, it is difficult to see how this is pertinent to Mr Woods in circumstances where he does not profess to practice or otherwise observe his religion. Similarly, those passages in the materials that seek to document difficulties arising from proselytising are not relatable to Mr Woods’ circumstances.
23. Be that as it may, I acknowledge that the reports in part provide evidence of social hostility e.g. “*social hostility also makes it difficult for Christians to rent homes, find jobs, and establish places of worship*” (International Christian Concern, C86); and that to some extent this appears to be sanctioned by the state – e.g. see report of 3 March 2018 detailing the closing of churches pursuant to what is perceived to be systematic inspections with a view to limiting activities.
24. Whilst it seems to me that it may be a stretch to conclude that a non-practising Christian could not establish himself in Algeria, the evidence of generalised hostility must be considered relevant in evaluating the

circumstances of the Appellant and Mr Woods as couple comprising a Muslim partner and a non-practising Christian partner.

25. It is in this context that I turn to the challenge that the Judge failed adequately to address the issue of social discrimination.

26. The Judge summarised the expert opinion of Dr Seddon in this regard in the following terms:

“He said that if they were to relocate within Algeria they were likely to face social discrimination at the very least as a result of the fact that they were not married and do not intend to get married.” (paragraph 43).

27. I am unable to identify from the Decision what findings or conclusions the Judge made in respect of this aspect of the evidence. The passage quoted above is immediately followed in the Decision by a reference to potential immigration difficulties for Mr Woods in relocating to Algeria, which are rejected by the Judge on the basis that she *“was not provided with any evidence about immigration law in Algeria”* – see further below. However this does not address the issue of claimed social discrimination, and I am unable to find any further reference to it in the body of the Decision.

28. In this context, and generally, my attention was also directed to two further passages in the country information before the first-tier Tribunal:

(i) An extract from the US State Department report for 2016 quoted at paragraph 13.1.1 of the Respondent’s ‘Country Policy and Information Note, Algeria: Background information, including actors of protection and internal relocation’ (Version 1.0, August 2017), under the heading ‘Women’ and subheading ‘Discrimination:

“Although the constitution provides for gender equality, many aspects of the law and traditional social practices discriminated against women. In addition, religious extremist advocated practices that led to restrictions on women’s behaviour, including freedom of movement. ... The law contains traditional elements of Islamic law. It prohibits Muslim women from marrying non-Muslims, although authorities did not always enforce this provision. Muslim men may marry non-Muslim women. A woman may marry a foreigner and transmit citizenship and nationality to both her children and spouse.” (C35)

(ii) An extract from the US Department of State’s International Religious Freedom Report for 2016:

“The family code prohibits Muslim women from marrying non-Muslim men unless the man converts to Islam” (C76)

29. In my judgement in circumstances where the law prohibits a marital relationship akin to the non-marital relationship enjoyed by the Appellant and Mr Woods, it is a ready and reasonable inference that any attempt to cohabit in Algeria would run contrary to the social and cultural milieu reflected in the laws of the land. Moreover, in circumstances where the country information also suggests an element of hostility towards non-Muslims, the substance of Dr Seddon’s opinion appears sound and well grounded.
30. I find the First-tier Tribunal Judge has not dealt adequately with the evidential materials before her in respect of the country situation, to an extent that she has disregarded or otherwise marginalised relevant evidence as to the difficulties that the Appellant and Mr Woods might face in attempting to continue family life in Algeria. This constitutes a material error of law and requires that the decision in the appeal be set aside.
31. In the circumstances it is not strictly necessary in the context of the ‘error of law’ stage for me also to give consideration to the further point raised in the challenge that Mr Woods *“would not be able to join [the Appellant] in Algeria because he is a Christian and they are not married”* (Grounds at paragraph 5, and see also paragraph 7 *et seq.*). Nonetheless, it would be constructive so to do.
32. The relevant passage in Dr Seddon’s report is this:

“It would be difficult for her partner, not only for cultural reasons, but also because he is a British citizen, to acquire the residence and other legal status to enable him to find work and be able to live a normal life with [the Appellant]” (paragraph 5.21).
33. The Judge was not prepared to accept this opinion on the basis that there was no evidence presented about immigration law in Algeria.
34. I remind myself that foreign law is a question of fact and requires to be proved by evidence rather than any attempt by a judge or tribunal of this jurisdiction to interpret foreign legal provisions. Nonetheless, it is usual for such matters to be supported by the opinion evidence of a lawyer or

lawyers (whether academic or professional) familiar with the particular foreign jurisdiction, and with express reference to the pertinent legislative materials. Dr Seddon does not offer such matters in his opinion.

35. Whilst there is no basis to doubt anything that Dr Seddon has said in respect of his expertise and experience (e.g. see paragraph 1.1 - 1.8 of his report), I can see nothing in such qualifications or expertise that directly relates to knowledge of Algerian immigration law.
36. Dr Seddon describes himself as a social scientist with qualifications in social anthropology, and research experience in economic and political change; he has extensive experience of teaching sociology and politics; he is involved in a consultancy group concentrating on emerging global issues including human rights, international security and terrorism, and risk analysis; he has visited Algeria, but this in itself does not make him an expert in its immigration law, and in any event has not visited since 2012. Dr Seddon describes himself as a social anthropologist familiar with the social laws and customs and traditions of contemporary Algeria, and states he has followed recent developments regarding the political and security situation; notwithstanding that he is not visited since 2012 he has continuing contact with Algerians and experts on the Maghreb.
37. I note the source materials to which Dr Seddon has indicated he had regard in compiling his report - and which are cited in support of the grounds of challenge - but my attention has not been directed to anything in those materials that is 'on point' in respect of immigration law and the possibility of Mr Woods being able to enter and establish himself as a lawful resident in Algeria.
38. Whilst I accept that the passage quoted above from the US State Department report in respect of the prohibition on a Muslim woman marrying a non-Muslim man would mean that the Appellant could not transmit her citizenship to Mr Woods, and would also mean that he could not otherwise seek to enter as a spouse - and moreover I am prepared to infer for the reasons explored above that he would face difficulties in seeking to secure entry and/or leave to remain on the basis of being an unmarried partner - it does not follow that there are not alternative routes to entry and stay in Algeria.
39. Dr Seddon's experience and expertise is such that I do not consider his opinion as to a matter that relates to a particular specialised aspect of law

is to be disregarded as wholly without value. I can readily envisage that he might be 'on to something'. However, in my judgement something more is required than is to be found in his report before such opinion can be accorded material weight. In this context it seems to me particularly significant that Dr Seddon has not made any attempt to relate his opinion as to the ability of Mr Woods to acquire residence or other legal status to any specific source be it documentary or one of his many contacts: the basis of the opinion is not articulated or supported in any way.

40. Accordingly, I would not have been minded to find material error of law on this particular point. Nor does it seem that in remaking the decision anything of material weight may be accorded to Dr Seddon's evidence in this specific regard.

41. Nonetheless, for the reasons given, the decision of the First-tier Tribunal is set aside.

Remaking the decision in the appeal

42. I turn then to a consideration of how best to remake the decision in the appeal.

43. Both representatives considered that the appeal could be remade by the Upper Tribunal and did not require a new hearing with all issues at large before the First-tier Tribunal. Mr Kandola favoured remaking the decision on the available material and invited the Tribunal to dismiss the appeal. Mr Khan suggested that there should be a further opportunity for the Appellant to file evidence in relation to the circumstances of an unmarried couple in Algeria, and also in respect of the immigration law, policy, and practice in Algeria.

44. I have reached the conclusion that it is not necessary to afford the Appellant the opportunity of filing any further evidence. In my judgement, irrespective of any issue in respect of the immigration position for Mr Woods in Algeria, the evidence explored above is sufficient to demonstrate that there would be insurmountable obstacles - in the sense of significant difficulties that could not be overcome or would entail very serious hardship - to continuing family life together in Algeria. On that basis the substance of the requirements of the Immigration Rules are met, and it is an easy inference that the Appellant's removal would thereby be a disproportionate interference with the family life established in the UK.

45. I find that where the law prohibits a marital relationship akin to the non-marital relationship enjoyed by the Appellant and Mr Woods, it is to be inferred that any attempt to cohabit in Algeria would run contrary to the social and cultural milieu reflected in the laws of the land. Moreover, the circumstances shown in the country information on file establish a significant element of hostility towards non-Muslims. Whilst this may not be enough to establish an insurmountable obstacle to a single non-Muslim male in establishing himself in Algeria, I am persuaded that it does constitute such an obstacle to a non-Muslim male establishing himself in a cohabiting non-marital relationship with a female Algerian national of Muslim religious and cultural background.

46. The appeal succeeds accordingly.

Notice of Decision

47. The decision of the First-tier Tribunal Judge contained a material error of law and is set aside.

48. I remake the decision in the appeal. The appeal is allowed on human rights grounds with reference to Article 8 of the ECHR.

49. No anonymity order is sought or made.

Signed: Date: **28 March 2019**
Deputy Upper Tribunal Judge I A Lewis

To the Respondent

Fee Award *(This is not part of the determination)*

I have allowed the appeal and in all of the circumstances make a full fee award.

Signed: Date: **28 March 2019**
Deputy Upper Tribunal Judge I A Lewis
(qua Judge of the First Tier Tribunal)