



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001158
First-tier Tribunal No. PA/54047/2022
IA/09755/202
2

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 22 January 2025**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**MOUADA LOTFI
(NO ANONYMITY ORDER MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr McKay
For the Respondent: Ms Arif, Senior Presenting Officer

Heard at Edinburgh on 7 November 2024

DECISION AND REASONS

1. The appellant is a male citizen of Algeria. He has brought a claim for international protection based on fresh submissions; the appellant had previously appealed to the First-tier Tribunal and (when that Tribunal had dismissed his appeal) to the Upper Tribunal which had set aside the First-tier Tribunal's decision. Following a resumed hearing, the Upper Tribunal had remade the decision dismissing the appeal on the basis that there existed sufficiency of protection in Algeria for the appellant and the option of internal flight. The appellant's subsequent appeal to the First-tier Tribunal had been dismissed and he now appeals, with permission, to the Upper Tribunal.

2. The First-tier Tribunal summarised the appellant's case at [9-10]:

9. The appellant says he was born in Algeria and lived all his life there until he left with his girlfriend Zeghour Maryam on 15 October 2015. He met this woman when she was a student at the University of Algiers in 2013, and they entered into a sexual relationship. She is said to be from a tribal community, the Berbers (the Kaybyle ethnic group), and he is of Arab extraction. His family home is in Algiers and hers is far from Algiers. The Berbers have a strict code that puts them at odds with non-Berbers when it comes to marriage. Pre-marital sex is not tolerated and family honour is besmirched if it does. He said she was a virgin when they met, they slept together at weekends and he believed he would marry her. Then around August 2015 her family began to pressure her into marrying one of her first cousins and she was eventually told that if she did not marry this man she would be killed. She and the appellant decided to elope to Europe by travelling first to Malta on a visa and then to France. They were four days in Malta, and then two days after arriving in France she decided to go back to Algeria without the appellant. She received information that her father was in hospital, she felt guilty and this was her reason for going back. On return her family had her medically examined and it is said she was found not to be a virgin. He says he does not know whether she is still alive and claims to have lost contact with her. After spending more than a year in France he made his way to the UK. He said his reason for doing this was because the Kaybyle have a presence in France and he believed even there that he would be harmed at the behest of his girlfriend's family. He has a sister living in Glasgow who is married to a British citizen and has made his home in the city as an asylum applicant with the limited leave granted to him.

10. It is claimed the appellant's parents have been the subject of threatening anonymous letters. Unknown individuals have sought information from them as to the appellant's whereabouts. It is alleged that in mid-June 2017 the appellant's sister was driving the appellant's car in Algiers with her sister and mother as passengers when their vehicle was subjected to a deliberate collision and the driver of the third party vehicle was found to be from the Kabyle tribe. They feared this to be part of the revenge initiative from his girlfriend's family.

3. An issue arose at the outset of the appeal as to the particular grounds upon which permission had been granted. First-tier Tribunal Judge Dempster had made it clear that she refused permission on Grounds 1, 2 and 4 but had granted permission on Ground 3. She had, however, failed to follow the principle in *Safi and others (permission to appeal decisions)* [2018] UKUT 388 (IAC) the headnote of which reads: 'It is essential for a judge who is granting permission to appeal only on limited grounds to say so, in terms, in the section of the standard form document that contains the decision, as opposed to the reasons for the decision.' In the section of the standard form document that contains the decision the judge has simply written: 'Permission to Appeal is granted.' Accordingly, I gave the appellant permission to argue all the grounds although only Ground 3 was addressed in any detail in submissions.

4. Mr McKay, who appeared for the appellant, submitted that the First-tier Tribunal decision was vitiated by the judge's failure to make clear findings on the three country expert reports adduced in evidence by the appellant.
5. Ms Arif, who appeared for the Secretary of State, submitted that the judge had considered the reports when he had recorded that they had failed to deal (because they had not been shown) a *nolle prosequi* dated 26 May 2019 purportedly issued by the police in Algeria which the appellant had adduced in evidence subsequent to the previous Upper Tribunal decision and which 'recorded that the Public Prosecutor at the Court of Hussein Dey, Algiers, had perused the file of his father dated 4 September 2018 and decided to temporarily suspend the file until new evidence was available and that this decision was to be communicated to the parties in the case' [First-tier Tribunal decision, 20].
6. It would have been helpful if the judge had expressly stated whether he accepted or rejected the expert evidence but I find that it is tolerably clear from the First-tier Tribunal's decision that the judge had placed little weight on the evidence because the experts had not considered relevant evidence. The *nolle prosequi* had assumed considerable importance in the appellant's latest claim. The appellant argued that the document showed that the authorities in Algeria would not or could not assist him if threatened by third parties whilst the Secretary of State considered 'that [the *nolle prosequi*] provides evidence that the Algerian state has in fact been prepared to investigate and take the appropriate action in regard to the complaints made by his father. A decision by the prosecution authorities not to proceed with a prosecution due to lack of evidence does not in her decision-maker's assessment prove or support his claim that the authorities are unwilling to help.' [27] The First-tier Tribunal judge had doubted the validity of the *nolle prosequi* [30] but he also did not find the evidence of the appellant and his father reliable. The judge gives reasons [38-39] for not relying on the evidence of the expert, Dr Hafidh, and at [35] concludes that the *nolle prosequi* does not advance the appellant's argument that there is no sufficiency of protection in Algeria.
7. I am reminded that 'an appeal court should 'set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable' (*Volpi* [2022] EWCA Civ 464 at [2v]). Although his analysis sometimes lacks focus, it is clear that the judge ultimately agreed with the Secretary of State that, far from supporting a case for an absence of protection from the authorities, the *nolle prosequi* (if genuine) indicated the willingness of those authorities to follow a rational process in criminal prosecution

which, in turn, indicated a willingness to assist an individual such as the appellant where the evidence permitted. Moreover, so far as the experts are concerned, it is clear that the judge did not place weight on their evidence because they had not seen and therefore had not commented on the *nolle prosequi*, a document which had become central to the appellant's case on appeal. The judge certainly did not (as the grounds of appeal suggest) ignore the expert evidence entirely. It was rational for the judge to place little weight on the evidence of experts who had not seen evidence which was highly relevant the remaining issues in the appeal. Otherwise, the judge has given clear and cogent reasons for dismissing the appeal. The remaining grounds (which, as I have noted, were not addressed in oral submissions) lack merit for the reasons given by Judge Dempster when refusing permission.

Notice of Decision

This appeal is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 20 January 2025