



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

Appeal Number: AA/07026/2014

THE IMMIGRATION ACTS

Heard at Field House

On 2 February and 26 June 2015

**Decision &
Promulgated**

On 6 July 2015

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

Appellant

**BB (ALGERIA)
(ANONYMITY DIRECTION MADE)**

Respondent/Claimant

Representation:

For the Appellant:

Mr N Bramble (02.02.15) and Ms A Everett
(26.06.15), Specialist Appeals Team

For the Respondent/Claimant: Ms A Broom, Solicitor, Duncan Lewis Solicitors

DECISION AND REASONS

1. The Secretary of State appeals to the Upper Tribunal from the decision of the First-tier Tribunal allowing the claimant's appeal against a decision by the Secretary of State to refuse to recognise him as a refugee, as otherwise requiring international or human rights protection. The First-tier Tribunal made an anonymity direction, and I consider that it is appropriate that the claimant is accorded anonymity for these proceedings in the Upper Tribunal.

2. The claimant is a national of Algeria, whose date of birth is 10 April 1995. On 3 July 2012 he applied for a visit visa as an unaccompanied child. He proposed to visit his uncle and aunt in London for a period of 21 days. The Entry Clearance Officer granted him entry clearance as he was satisfied that he was a student, and authorisation to travel had been given by his father.
3. The claimant is recorded as having claimed asylum on 5 February 2013. He was given a screening interview on 14 February 2013, and he made a witness statement in support of his asylum claim on 21 February 2013. He was subsequently interviewed about his asylum claim on 8 November 2013.
4. In his witness statement, he said that he had been born and brought up in Algiers. Neither of his parents worked, and they were supported by two paternal uncles. They all lived in one household with these two uncles. His mother was a practising Christian. He was not sure of his father's religion. He was an alcoholic, and he never saw him practising any religion. The claimant was brought up as a Christian, as was his older brother (who no longer lived at home). His mother's religion caused problems for them. They were bullied, threatened and verbally abused. His paternal uncles used to attack his mother. The claimant was not allowed to eat from a plate, and nor were his mother and brothers. His uncles made them eat out of bowls like dogs rather than like human beings. He was a particular target. His uncles would beat him on a daily basis. Their neighbours would target him also. People would spit on them as they passed by and say if they did not become Muslim, they would be killed. They would call him a dirty Christian, and say he did not deserve to be alive.
5. From the age of 7, one of the two uncles began raping him. He would do so whenever there was no one else around. When he was about 13, he threatened him with a gun and said if he told the police or if anything happened to him, his friends would get him instead. When he was about 13, things got worse. He started trying to stand up for his mother when his uncles abused her. He also began trying to refuse his uncle who was sexually abusing him. As punishment, his uncles would put him in the basement where he would be tied hand and foot and left there. He told his uncle that he was gay. He hoped this would repel him, and cause him to stop trying to abuse him. His uncle did not try to touch him as often, but it did not stop altogether. His older brother left home when the appellant was 14. His uncle told other people that he was gay, and spread it all around the neighbourhood. It made people in the neighbourhood become even more abusive towards him. He was always under pressure because of his sexuality and as he got older the pressure to change his religion increased. He was set on by groups of youths when he came back from school. He would be beaten with sticks. From the time that he was 13 until he was 16, he went to school very irregularly. Once he even reported what was going on to the police but they just laughed at him and sent him away. He told them he was being abused because of his religion

and his sexuality, and one of them stroked his face and called him a pretty boy and told him to run along home. They did not care. This was when he was aged 14.

6. The whole family moved to Oran when he just turned 16. The uncle who used to rape him took him and his parents and younger brothers there. They were there for four months, and then they moved back to Algiers. At this point, his father took him to get a passport. It was a secret between himself, his mother and father. Not even his younger brothers knew.
7. He and his brothers had been going to school in Oran, and it was much better for him there because no one knew anything about him or his circumstances. The day after they returned to Algiers, he was kidnapped by a group of Salafists. He was on the street at the time, and three of them came from behind and grabbed him. They took him to the forest and held him for about seven days. They would beat him and preach to him and try to convert him. They told him what the Quran said about homosexuality and about Christianity. They would tie him up and would hit him and kick him. He was gagged, and sometimes he nearly suffocated.
8. After about a week there was a big sound of alarms like maybe police sirens, and they ran away leaving him alone. He was not tied up, as they only tied him up when they were beating him. He was able to run away himself. He walked for about an hour and a half and came to an area where there were some lorries parked. He just got into one at random, and hid in the back amongst sheep. The lorry drove for five or six hours and stopped in Oran. He did not want to go back to his family, and he did not feel safe in Algiers. So he thought he might as well stay where he was. He spent about eight months in Oran. For the first few weeks he slept rough and begged on the streets to get food. After a bit, he realised he could earn money helping the fishermen. He did not tell them about his sexuality.
9. He had never had a consensual homosexual relationship, but he knew that he was not physically attracted to women and that he was attracted to men.
10. After about month the claimant contacted his mother in Algiers, and told her where he was and what had happened. She agreed that the safest thing was for him to stay where he was. He would speak to her every couple of weeks or once a month. After a few months, his mother told him she was planning for him to come to the UK to stay with his maternal uncle. She said she had asked them if he could come on a holiday, and they had been happy to agree. He returned to Algiers for one day in order to do the biometrics for the visit visa application. He travelled to Algiers by coach for this appointment, and he met his father who took him for the biometrics. This was in June 2012. The father collected the visa, and he eventually left Algeria on 7 August 2012. He did not know why there was a delay, as his mother was dealing with the arrangements.

11. The claimant was seen by Dr Satinder Sahota, consultant forensic psychiatrist, on 24 September 2013. Dr Sahota prepared a psychiatric report on 30 September 2013. The claimant presented with a history of mental health problems with onset in Algeria, and a history of treatment of his mental health in the UK. He reported a history of physical abuse from the age of 7 years. He left school at the age of 16 years, and reported that he was kidnapped the same year because of his homosexuality and Christian religion. He told Dr Sahota that he could not return home when he was released as he feared he would be killed by his uncle. He had been living with his maternal uncle in Brixton since 7 August 2012, and he attended an ESOL English language course at a college in Vauxhall. He reported a long history of assault and self-harm. He also reported a history of depressed mood and anxiety. He said he had stayed indoors since he came to the UK, preferring not to talk to anyone. He was under the care of Lambeth Adolescent Mental Health Services where he received a diagnosis of PTSD. He had now been discharged from the service, and was receiving fluoxetine antidepressant medication 20mg per day from his GP. He was also receiving promethazine which was an antipsychotic drug, commonly prescribed for its hypnotic properties.
12. The claimant told Dr Sahota that he suspected his uncle was behind the kidnapping incident in Algeria. In his opinion, the claimant's symptoms were characteristic of PTSD, which was the appropriate diagnosis. His response to treatment for his PTSD was dependent on (in addition to psychiatric and psychological interventions) whether he could pursue his educational and occupational interests and overcome his immigration problems. He could start to respond to treatment within three to six months if those factors improved.
13. On 2 September 2014 the Secretary of State gave her reasons for refusing to recognise the claimant as a refugee. Given the inconsistencies and notable lack of detail provided in response to questions relating to his sexuality, it was not accepted that he was gay. His claim to be a Christian was also rejected. It was not accepted he had suffered mistreatment at the hands of his uncles, neighbours and teachers because of his religion. His claim to have been kidnapped by Salafists was also rejected. He stated that he had moved to Oran with his family and that while living there he did not encounter any problems. It was considered he could return to Algiers or Oran. He suffered from PTSD, but the evidence did not indicate that his depression was at such a critical stage it would be inhumane to remove him. Suitable medical treatment was available in Algeria which he could access in the future. He had not provided any evidence that he would be denied medical treatment or that he would not be able to travel to obtain such treatment. So his removal from the United Kingdom would not amount to a breach of Articles 3 and 8 of the ECHR.

The Hearing Before, and the Decision of, the First-tier Tribunal

14. The claimant's appeal came before Judge Harris sitting in the First-tier Tribunal at Hatton Cross on 6 November 2014. Ms Broom appeared on

behalf of the claimant, and the Secretary of State was represented by a Home Office Presenting Officer.

15. In his subsequent decision, the judge found that his account of his experiences in Algeria was credible. Although the Secretary of State correctly identified the lack of knowledge of Christianity displayed by the claimant, he considered that a significant aspect of the claim was not so much any religious activity on his part but that he identified himself as not being a Muslim; “and how some Muslims take this as an affront to their religion” (paragraph 41). The judge reached the following conclusion at paragraph [48]:

“The [claimant] sometimes told his account in a muddled way. Nevertheless, weighing up the evidence before me, I consider there has been sufficient plausibility and consistency in the core parts of the claimant’s claim for me to find him to be credible.”

16. On the issue of risk on return, the judge went on to cite guidance given by the Upper Tribunal in **OO (gay men: risk) Algeria CG [2013] UKUT 63 (IAC)** paragraph 85. The guidance included the following:

(c) The evidence does not suggest that, as a general matter, societal and familial disapproval of male gay identity in Algeria reaches levels that are persecutory, within the meaning of Article 9 of the Qualification Directive, or otherwise reach the threshold required for protection under Article 15B of that directive or Article 3 of the ECHR.

(d) That conclusion is reinforced by the evidence that the admittedly small number of gay men who live openly as such in Algeria do not in general suffer serious harm amounting to persecution.

(e) If somebody is able to establish that their behaviour was shaped by more than disapproval amounting to serious harm, they may be able to establish a need for protection. Each case should be determined on the evidence specific to that particular case.”

17. Applying this guidance, the judge held at paragraph [51] that the claimant was not at a real risk of persecution on return to Algeria by the Algerian authorities either as a gay man or as a Christian.

18. But, applying paragraph 399K of the Rules, he found that the claimant was at risk of persecution for a Convention reason from non-state actors in his home area.

19. At paragraphs [55] onwards, the judge addressed the question of internal relocation. From the claimant’s account, the claimant was able to stay in Oran for “a number of weeks” without a problem. But he did not live openly as a gay man or as a person identifying himself as Christian. He was satisfied that, as at the date of the hearing, there was a real likelihood that the claimant would wish to live openly. The background evidence indicated there was widespread social disapproval and discrimination against gay men in Algeria, albeit not generally of a severity to amount to persecution. Similarly, the background evidence also indicated there to be

social disapproval and discrimination against those identified as Christians, albeit not generally amounting to persecution. The judge continued:

“58. However, I consider that on the particular facts of this claimant’s case there is a distinct combination of being not only openly a gay man but also someone who identifies expressly as a Christian. This would, to adopt the language used at paragraph 77 of **OO Algeria**, be considered by many in Algerian society as an affront to that society’s moral and religious code because of a refusal to conform to proscribed norms of behaviour.

59. On the evidence before me, I find that internal relocation is not reasonably available to the claimant because of the level of discrimination and animosity he would face in his particular circumstances.”

20. For that reason, the judge found that the claimant qualified for protection as a refugee, and that there were substantial grounds for believing that the claimant faced a real risk on return of ill-treatment in breach of Article 3 ECHR.

The Application for Permission to Appeal

21. A member of the Specialist Appeals Team applied for permission to appeal on behalf of the Secretary of State. The judge had mistakenly taken discrimination, social disapproval and animosity as reaching the threshold for persecution when at paragraph [57] of the decision he had found that the objective evidence did not demonstrate persecutory behaviour for either Christianity or homosexuality. The judge had made a material misdirection of law in relation to the threshold required to establish refugee status (i.e. a risk of persecution, not a risk of discrimination).

The Grant of Permission to Appeal

22. On 19 December 2014 First-tier Tribunal Judge Kelly granted permission to appeal for the following reasons. It was arguable that in failing firstly to consider whether there was a part of the country of origin where the claimant would not have a well-founded fear of being persecuted the Tribunal failed properly to apply the provisions of paragraph 3990 of the Immigration Rules. As the background country information (cited by the Tribunal) suggested that societal discrimination in Algeria against gays and Christians generally fell short of persecution, the arguable error of law identified in the application might also be material to the outcome of the appeal.

The Error of Law Hearing

23. After hearing from Mr Bramble and Ms Broom, and having reviewed the country guidance case of **OO Algeria** and paragraph 3990 of the Rules, I was persuaded that a material error of law was made out, such that the decision should be set aside and remade. My reasons for finding an error of law are set out below.

24. After further discussion, it was agreed by the parties that I could remake a decision on the reasonableness of internal relocation (and hence remake the decision on the claimant's international protection claim) without hearing any further evidence. However, I noted from Ms Broom's skeleton argument before the First-tier Tribunal that she had also advanced an Article 8 claim, which had not been addressed by Judge Harris.
25. While the claimant did not cross-appeal on this issue, Mr Bramble conceded that Article 8 was an issue which I would have to address if I remade the decision on the claimant's international protection claim in favour of the Secretary of State. The solution which he proposed, and with which Ms Broom concurred, was that I should make directions for a resumed hearing in the Upper Tribunal on the Article 8 claim if such an eventuality arose (namely the remaking of the decision of the international protection claim in the Secretary of State's favour) but not if I remade this decision in the claimant's favour.

Reasons of Finding an Error of Law

26. Paragraph 3990 states:

- '(i) The Secretary of State will not make:
 - (a) a grant of asylum if in part of the country of origin a person would not have a well-founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country...
- (ii) in examining whether a part of the country of origin or country of return meets the requirements
 - (i) the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.'

27. In **Januzi & Others v Secretary of State for the Home Department [2006] UKHL 5** each of the appellants before the House of Lords had been refused recognition as a refugee on the basis that there was another place within the country of his nationality, where he would have no well-founded fear of persecution, where the protection of the country would be available to him and where in all the circumstances he could reasonably and without undue harshness be expected to live. The common issue in the appeals was whether, in judging reasonableness and undue harshness in this context, account should be taken of any disparity between the civil, political and socio-economic human rights which the appellant would enjoy under the leading international Human Rights Conventions and covenants and those which he would enjoy at the place of relocation.

28. The House of Lords essentially answered this question in the negative. Giving the leading speech, Lord Bingham at paragraph 13 cited with approval the following dicta from **EA & Other v Secretary of State for the Home Department [2003] EWCA 1032** at paragraph 67:

“... we consider that consideration of the reasonableness of internal relocation should focus on the consequences to the asylum seeker of settling in the place of relocation instead of his previous home. The comparison between the asylum seeker’s situation in this country and what it would be in the place of the relocation is not relevant for this purpose, though it may be very relevant when considering the impact of the Human Rights Convention on the requirements of humanity.”

29. At paragraph 20, Lord Bingham said that valuable guidance was to be found in the UNHCR guidelines on international protection dated 23 July 2003. Paragraph 7H(a) of the reasonableness analysis was approached by asking “can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship?” and the comment is made: “if not, it would not be reasonable to expect the person to move there”. In development of this analysis the guidelines addressed respect for human rights in paragraph 28:

‘Respect for human rights. Where respect for basic human rights standards, including in particular non-derogable rights, is clearly problematic, the proposed area cannot be considered a reasonable alternative. This does not mean that deprivation of any civil, political or socio-economic human right in the proposed area will disqualify it from being an internal flight or relocation alternative. Rather, it requires, from a practical prospective, an assessment of whether the rights that will not be respected or protected are fundamental to the individual, such that the deprivation of those rights would be sufficiently harmful to render the area an unreasonable alternative.’

30. At paragraph 21 Lord Bingham said:

“The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts.”

31. Ms Broom’s submission below was that internal relocation was absolutely not a viable option for the claimant as he would be unable to live openly as a homosexual in Algeria. Due to the criminalisation of homosexual relationships and the widespread societal discrimination, he would be at risk of persecution from state and non-state actors. He would also be unable to return to Algeria as a Christian, a country where Christians were maltreated, arrested and churches were closed.
32. As the same findings of fact by the judge on the issue of internal relocation were also deployed to justify a finding under Article 3 ECHR, the judge appears to have accepted Ms Broom’s submission and to have found that the appellant had a well-founded fear of persecution *throughout* Algeria. This was not a finding that was open to the judge, having regard to **OO Algeria** and the background evidence before him as the experience of Christians in Algeria. As the judge acknowledged in paragraph [57] of his decision, the background evidence indicated that treatment of gay men in Algeria and those identified as Christians did not generally amount to

persecution. So if neither characteristic (being openly gay or being openly Christian) engendered a real risk of persecution outside the claimant's former home area in Algeria, there was no logical basis for inferring that the *combination* of the two characteristics would carry the claimant over the persecutory threshold. In order to find that the combination of the two characteristics engendered a well-founded fear of persecution throughout Algeria the judge would have needed to identify background evidence which supported such a proposition, and he failed to do so.

33. Instead, the judge supported his finding by a passage from **OO Algeria** which does not form part of the Upper Tribunal's guidance. At paragraph 77, the Tribunal said that they had borne in mind "the expressed view" that anyone believed to be gay would be considered to represent an affront to society's moral code because of a refusal to conform to prescribed norms of behaviour.
34. But notwithstanding this expressed view, the Tribunal went on to reach the conclusion that nonetheless being openly gay did not engender a real risk of persecutory ill-treatment. This was because there was no evidence indicating homophobic attacks or serious harm meted out to an individual who was or was suspected of being gay. There was also evidence to suggest that some gay men in Algeria found it possible to live openly: "if living openly does not attract serious harm, which on the evidence before us it does not, people feeling compelled to act discreetly does not mean that the threshold of Article 9 is reached; the fact that a person does not live openly cannot put that person in a better position than a person who does live openly."
35. Ms Broom sought to salvage the judge's decision on internal relocation on the ground that his finding at paragraph [59] is not to be treated as a finding that the claimant has a well-founded fear of persecution throughout Algeria, but as a finding which is paragraph 3990 compliant: that is to say, a finding that there is no part of Algeria where the claimant can reasonably be expected to stay.
36. But if the claimant is safe from persecution in another part of Algeria, even if he chooses to live openly as a Christian and gay man, *prima facie* it is reasonable for the claimant to relocate internally. In short, the judge has not given adequate reasons for finding that internal relocation is not a viable option for the claimant.

The Remaking of the Decision on the International Protection Claim

37. In remaking the decision, my starting point is that the findings of the First-tier Tribunal with regard to past persecution remain undisturbed. Paragraph 399K provides that the fact that a person has already been subject to persecution or serious harm will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm unless there are good reasons to consider that such persecution or serious harm will not be repeated.

38. There are good reasons to consider that the claimant will not suffer persecution or serious harm outside his former home area in Algiers. The claimant was peculiarly vulnerable because he was a minor in a household presided over by an abusive uncle. Not only did this abusive uncle stir up animosity towards the claimant in the neighbourhood on account of his espousal of the Christian faith and his declared homosexuality, but he also probably lay behind the claimant's abduction and detention by Muslim extremists who sought to forcibly convert the claimant to Islam. The claimant's age and membership of his uncle's household is also likely to have been a factor in his inability to access police protection when he complained about his ill-treatment at the age of fourteen.
39. The claimant would not be returning to live in his uncle's household while still a minor, but would be returning as an adult to live somewhere else outside his uncle's sphere of influence and control. The claimant was able to live for eight months in Oran as a minor without any interference from his uncle and without any problems on account of his sexual orientation (albeit undeclared) or on account of the fact that he was a non-Muslim.
40. Although the quality of life for gay men and Christians in Algeria is significantly worse than it is in a European country such as the United Kingdom, it is not the comparison between the claimant's life here in a tolerant society and what his life would be in a place such as Oran which is material. Even if he chose to live openly as a gay man and Christian in a place such as Oran, there is not the real risk of the claimant suffering persecution in consequence, and he would be able to lead an adequate private life. I am reinforced in this finding by the background evidence discussed below.
41. The background evidence relating to the experience of Christians in Algeria is mixed. While on the one hand they face discrimination, the number of adherents to the Christian faith in Algeria is growing (claimant's bundle page 82). In the report downloaded from the internet on 3 November 2014 (claimant's bundle page 80) the following is stated:
- 'Protestant church planters have been active in recent years, claiming to launch dozens of churches as they travel and find converts already present in many towns thanks to Christian radio and satellite TV. Conservative estimates put Algerian Christians at 10,000 strong, largely concentrated in Kabylie where the non-Arab populace has proven more receptive to Christianity.
- Protestants first established a foothold in Kabylie in the 1980s and grew in number through the 1990s while the government was occupied with domestic terrorism. While terrorist attacks continue in Algeria, relative to the 90s concerns have begun to subside just as evangelism efforts have doubled the Protestant presence in Arab areas outside of Kabylie.'
42. In conclusion, for the reasons I have given above, I find that the claimant can reasonably be expected to stay in a place such as Oran or Kabylie, and that the claimant thus does not qualify for recognition as a refugee. By the same token, there are not substantial grounds for believing that on

return to Algeria the claimant would face a real risk of harm of such severity as to cross the threshold of Article 3 ECHR.

The Resumed Hearing to remake the Decision under Article 8 ECHR

43. The claimant spoke through an Arabic interpreter whom he clearly understood. He adopted as his evidence-in-chief his witness statement dated 13 April 2015. Since being in the UK, he had been able to live openly as a gay man. He met his first partner at Lambeth College in 2013. His name was Cedric and he was French. He had been in a relationship with Cedric for two months, but it was not a sexual relationship.
44. He met his second partner in February 2014 at a pub in Clapham. His name was Zeki, and he was Colombian. They had a relationship for five months. He met his third partner in August 2014. His name was Tio, and he was French. He had met him in a pub in Soho. They had now been in a relationship together for nearly eight months. They met around three to four times a week. Sometimes they studied together, sometimes they went to the cinema, pub or visited mutual friends. They liked to go skateboarding in various places in London, and they sometimes went to gay clubs together. Their favourite club was the Duck Village in Vauxhall.
45. He had asked Tio to come and see his solicitors to provide a witness statement in support of his appeal. Tio said he would not be able to do this, as he was working. Tio did not know about his immigration status, and he did not want to involve Tio in his problems.
46. He was living with his family and his uncle did not know that he was gay, so he could not go out as much as he would like to. Also, he was studying. He had never joined any gay websites to meet people. As he lived with his family, he did not want his uncle to see this on his computer. He did not want to disrespect him. Also, as he was in a relationship, he did not need to be signing up to any gay websites. His family in the UK consisted of his aunt M, and his uncle G. His uncle G was his mother's brother. His aunt was a British citizen, and his uncle G had been granted ILR. He told his aunt M that he was gay about one and a half years ago. She was fine about this, and did not react negatively. He had not told his uncle that he was gay. He had asked his aunt to promise not to tell his uncle that he was gay. If his uncle found out that he was gay then he would kill him and he did not know whether he would still be able to reside with him and his aunt, and what would happen to him. His uncle had a mentality like people in Algeria. His uncle also did not know that he was a Christian. He had been mainly attending St Matthew's Church and Christ Church in Brixton.
47. He had been receiving medication for depression and sleep deprivation. Since being in the UK, he had tried to commit suicide on more than one occasion. On one occasion his uncle had seen him, and taken him to King's College Hospital in London. He could not remember how long he was at the hospital. He was prescribed new medication, and they told him to go to a psychiatrist. He was diagnosed with PTSD in May 2013. He

then saw a psychiatrist on a monthly basis at South London and Maudsley NHS Foundation Trust.

48. He had been attending Vauxhall Lambeth College since September 2013. He had completed courses in maths and English ESOL E2 in June 2014. He was now studying English level 1, maths E3 and carpentry and joinery level 1, and he would complete these courses in June 2015. If he was granted status, he would like to go on to study science at university. He would also like to work in the field of carpentry, as he enjoyed this very much. He could not imagine going back to Algeria, as he feared he would be killed as a gay man and as a Christian. He could not live openly or comfortably in Algeria.
49. The claimant was asked some questions by Miss Broom, and was cross-examined by Miss Everett. He was asked why there was no letter of support from Tio. He said it was a private issue. He did not want to involve him in his immigration situation. He was asked about the family that he had in Algeria. He said that he had his mum, sister and three of his siblings living in Algeria. He had last spoken to them three years ago. He said that his uncle here (his mother's brother) was not in contact with his mother. He was asked why. He said his uncle did not want to have contact with her since he had heard about his problems in Algeria.
50. In cross-examination, he said he had told his aunt he was gay as he trusted her. He did not know if she had told his uncle. Maybe she had told him. He had told his boyfriend that he was French. This was a plausible explanation, as he (the claimant) spoke fluent French. French was the second language of Algeria. He told his boyfriend he had been born in Algeria, and that he had grown up in France where his mother and father continued to reside.
51. In her letter of support dated 14 April 2015, the claimant's aunt M said that the claimant had come to visit them in August 2012 on a holiday visa, and over the years had become an accepted part of the family. He missed surfing, but had become adept at skateboarding, and regularly used the skate park in Brixton. He appeared to have made friends and settled into life here. They talked regularly, and he confided in her about some of his relationships, and he had accepted her advice on safe sex. Even her husband had now accepted that the claimant might be homosexual, something he would not have been able to be so open about in Algeria. Having been to Algeria many times since 2008, she had not seen any openly gay men, and it was something that the claimant's Muslim family would not accept.
52. The claimant continued to receive medical assistance to help him recover from the post-traumatic stress which he had suffered as a result of being abused by male relatives on his father's side. In recent times he had appeared more content and happy. She and her husband were willing to continue to support him financially and emotionally.

53. In an undated letter, another aunt of the appellant in the UK, aunt F, who is the sister of aunt M, said that M had told them all before the appellant arrived here, that she was desperate to have him to come to stay with her as she was very concerned about the abuse he was suffering in Algeria, and she was certain that the abuse would continue if he went back to Algeria. Although the claimant was a few years older now, aunt M said he would not be able to support himself and live a normal life over there. He had arrived in the UK as a very shy and introverted young boy who could not understand more than a few words in English. But each time she had met him, his efforts to learn English were fantastic, and he had very quickly become fluent in English, and he had also grown in confidence. They all thought he would only go backwards if he was to return to Algeria.
54. In her closings submissions on behalf of the Secretary of State, Miss Everett submitted that the claimant's Article 8 rights were not engaged. In reply, Miss Broom referred me to her extensive skeleton argument in the supplementary bundle. There would be very significant obstacles to the claimant's integration into the country to which she would have to go if required to leave the UK. He had so little connection with Algeria as to mean that the consequences of him establishing a private life there would be unjustifiably harsh, following **Ogundimu [2013] UKUT 0060 (IAC)**. She referred to **HJ (Iran)** and **HT (Cameroon) [2010] UKSC 31**, and submitted that gay people were unable to live openly in Algeria, and so the claimant would be at real risk of persecution by living openly in Algeria. The precariousness of the claimant's immigration status should be given little weight as he was a minor when he entered the UK, and he had remained in the UK for reasons beyond his control.

Discussion and Findings on the Article 8 claim

55. The necessary starting point in assessing the claim under Article 8 ECHR is my earlier finding on the claim for international protection, in particular my finding that there are areas in Algeria where the claimant can choose to live openly as a gay man and Christian without there being a real risk of him suffering persecution in consequence, and that he would be able to lead an adequate private life in such places. Accordingly, the second requirement identified in **HJ (Iran)** is not satisfied, namely that gay people who live openly will be liable to persecution in the country of origin.
56. As submitted by Miss Everett, there is also reason to question whether the claimant meets the fourth requirement in **HJ (Iran)**, which is as follows:
- “If the applicant would live discreetly, why would he live discreetly? If the applicant would live discreetly because he wanted to do so, or because of social pressures (e.g. not wanting to distress his parents or embarrass his friends) then he is not a refugee. But if a material reason for living discreetly would be the fear of persecution that would follow if he lived openly, then he is a refugee.”
57. Despite not having a fear of persecution in the UK, the claimant lives discreetly as a homosexual here in that he has confided his homosexuality to his aunt and not announced it to his uncle. Absent taking his aunt into

his confidence, it would not be obvious to his aunt that he was active as a homosexual. So if the claimant is discreet about his homosexuality in the UK because of social pressures (e.g. not wanting to embarrass family members here) there is no reason to suppose that he would live any less discreetly in Algeria, or that he would want to be more open about his homosexuality in Algeria than he is about his homosexuality in the UK.

58. But even if the fourth requirement is met, the second requirement is not, and I am not persuaded there are very significant obstacles to the claimant's reintegration into life and society in Algeria. Clearly it would not be reasonable to expect him to return to live in the same household as his abusive uncle, or in the same neighbourhood. The significance of the evidence given by aunt M is that she returns on a frequent basis to Algeria, and so she must have relatives in Algeria. These relatives, at aunt M's instigation, ought to be able to provide the claimant with some support. But even if the claimant cannot access practical and emotional support from relatives of aunt M or aunt F in Algeria, he is now sufficiently mature and advanced in his recovery from the symptoms of PTSD to be able to lead an independent life in Algeria. It is clear from the aunt's evidence that she and her husband will provide the claimant with the necessary financial support to maintain and accommodate himself in Algeria, and will provide him with the necessary funding for his further and higher education in Algeria.
59. Given the claimant's history, and his length of residence in the United Kingdom, I accept that questions 1 and 2 of the **Razgar** test should be answered in his favour. Questions 3 and 4 of the **Razgar** test should be answered in favour of the Secretary of State, and so the crucial question is whether the interference consequential upon the refusal decision is a proportionate one. In assessing proportionality, I take into account the public interest considerations set out in Section 117D of the 2002 Act.
60. Although the claimant was a minor when he arrived in the United Kingdom on a visit visa, most of his residence here has been accrued as an adult. Moreover, the principle that little weight should be attached to private life which is built up while a person's status is precarious applies to children no less than it applies to adults. Only when a person has accrued seven years' residence in the United Kingdom as a child are the scales significantly tipped in that person's favour. When the claimant reached his age of maturity in the UK, he had been in the United Kingdom for less than one year.
61. The claimant is now over the age of 20, and as he progresses further into adulthood, the proposition that he enjoys family life with his uncle and aunt for the purposes of Article 8 ECHR becomes increasingly tendentious. But even if this is assumed in the claimant's favour, and even taking into account the excellent progress the claimant has made in integrating into UK society, I find that the public interest in the maintenance of firm and effective immigration controls should prevail. Although he has not been successful in his asylum claim, by pursuing it the claimant has been able

to remain in the UK for some three years so as to access medical treatment and familial support in recovering from the domestic abuse to which he was subjected as a minor in Algeria. So neither the claimant, nor any of his family members here, has a legitimate expectation that the claimant can extend his stay here on human rights grounds rather than having to satisfy the “normal” requirements for limited leave to enter or remain under the Rules, such as meeting the points-based system requirements for entry clearance or leave to remain as a Tier 4 (General) Student Migrant.

Conclusion

62. The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside and the following decision is substituted: the claimant’s appeal is dismissed on all grounds raised.

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

Unless and until a Tribunal or court directs otherwise, the claimant 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 claimant and to the SSHD. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Monson