



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

Appeal Number: PA/05326/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29 November 2018**

**Determination & Reasons  
Promulgated  
On 13 December 2018**

**Before**

**UPPER TRIBUNAL JUDGE KEKIĆ  
HH JUDGE EADY QC, sitting as a judge of the Upper Tribunal**

**Between**

**H O  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Eaton, Counsel instructed by Duncan Lewis Solicitors  
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This appeal comes before us following the setting aside of the decision of First-tier Tribunal Judge Freer dated 23 February 2018 which allowed the appellant's asylum appeal against the respondent's decision to refuse protection on 22 May 2017. Full reasons were given

in the determination of Judge Kekić of 30 August 2018; no findings were preserved. The appellant's oral evidence, however, remains on record.

2. The appellant is a national of Algeria, born in April 1973. He arrived illegally in October 2008 and appears to have made no attempt to regularize his stay until 23 February 2017, after he was detained and after removal directions were set. Meanwhile, he had been arrested on suspicion of theft in 2010 and again in February 2011, when removal directions were set for 27 March but cancelled due to a pending prosecution. He then failed to attend his trial in June 2011 and a warrant for his arrest was issued. On 1 January 2016 he was arrested on suspicion of handling stolen goods but absconded when granted temporary release. On 28 November 2016 he was convicted and sentenced to prison for three months for possession and/or use of a false instrument. Removal directions were set once more but suspended when he claimed asylum.
3. The appellant's claim is that in Algeria, in May 2007, he witnessed the killing of an old man whose name he did not know (B14) but whom he referred to as the sheikh. The man was a local car park attendant and the appellant believes he was killed by members of the military disguised as extremists (he called them "*terrorists*"). He confided in a friend about his theory which was then discovered by the authorities at the man's funeral when it was vocalised by the friend. The appellant's friend was arrested that evening and detained for some six months. Upon his release, the authorities returned to arrest him and he jumped out of a window to avoid further detention and died. The appellant fears that the authorities are interested in him as the source of his friend's information. He also claims to fear the family of his dead friend.
4. The appeal was previously dismissed by Judge Lal on 29 June 2017, but that decision was set aside due to a failure to assess the issue of illegal exit and an inadequate credibility assessment. It was then heard by Judge Freer.
5. On 2 February 2018 a deportation order was made against the appellant. He has not appealed that decision.

### **The Hearing**

6. The appellant attended the hearing before us on 29 November 2019 and gave oral evidence through an Arabic interpreter. He adopted his witness statement of 28 June 2017, which he had signed in English, and confirmed its contents as true. He was then tendered for cross examination.

7. In response to questions put by Mr Deller, the appellant stated that he believed that the three men who had come and spoken to him and his group of friends one evening in May 2007, were the same people who killed the sheikh, because they were in Afghani dress and had gone into the military base in the neighbourhood. He said that there were between eight and eleven men. They had not come together, but separately. When asked if he had seen the killing, he stated that he had been there when the three men came; he then left but had forgotten his bag which he returned to retrieve. He then saw the sheikh "*was killed*". When asked to clarify if he had witnessed the actual killing, he confirmed he had. He stated that the authorities in Algeria could kill anyone when they had problems. He said he saw that the sheikh had been guarding the cars. He confirmed that he recognised the killers as the men who had spoken to him. He said they had exited from the military barracks. When asked whether he and his friend had known the sheikh, he replied that his friend had not. They had all gone home as directed. When asked if he had known the sheikh, he replied that he had. He then added that everyone in the neighbourhood knew him. He said he had attended the funeral because that was what was done in Algeria. He confirmed that it was at the funeral that his friend announced that he was aware of who had killed the sheikh. The appellant claimed to have been surprised when his friend spoke out and he said he, himself, would not have made such an announcement. He considered that he had made a mistake in confiding in his friend.
8. The appellant was asked what the three men had said to him. He replied that if terrorists saw people smoking they would tell them not to, because it was prohibited. He confirmed that he had been sitting with friends and smoking and these men came up to them and threatened to kill them, "*like they had killed many hundreds of others*", if they ever saw them smoking again. There had been a curfew in force at the time. He stated that he believed they were military personnel masquerading as terrorists. When they lost one of their members, they could kill anyone. He did not know why the sheikh had been killed; no one in the neighbourhood could think of a reason, particularly as he was an old man.
9. The appellant confirmed that it was after the funeral that the police came to look for his friend. They went to his house and questioned him. They were concerned that he had spoken out. His family then spread the news to others and soon all the neighbourhood knew that people had come out of the barracks in Afghani dress. They became aware that the appellant had provided this information because his friend had disclosed this when pressured under questioning. The appellant was aware of this from his brother and his friend's family.

The appellant then left the area and went to Ain Difla, a village where his father used to live.

- 10.** The appellant stated that he had been stabbed in his hand with a bayonet. This occurred three days after the killing. He had to go to the doctor about it. He could not recall when the funeral had taken place. It might have been one or two weeks after the man's death. He had been stabbed before that. It was not the custom in Algeria to bury bodies quickly. He suggested that the Tribunal check the internet for confirmation. He stated that many people in Algeria were missing. Human rights organisations came but achieved nothing. He confirmed this information was available on the internet.
- 11.** The appellant stated that the stabbing had no connection with the old man and that incident. The attack had occurred when he was sitting with others and the military came and beat them up. He did not know why.
- 12.** The appellant said that he had left Algeria by boat. His father paid for his journey. He did not pass through border control when exiting.
- 13.** The appellant said that he had delayed making an asylum claim because he was not aware of the procedure and thought that reporting to sign on was all that he needed to do. If he were to return now, the risk to him would be ongoing. He stated that in 2010 his family told him that the authorities were still looking for him. After that, he lost contact with them; they moved and he did not want to create problems for them. His father was elderly.
- 14.** That completed cross examination. There was no re-examination.
- 15.** In response to questions from the bench, the appellant confirmed that the incident described was the first time he had been threatened by terrorists. When asked why he believed they were in fact military personnel, he replied that he lived very close to the military base and they had come out from there. No real terrorists would be able to do that. He saw them again in the morning from his window; they were wandering around. They were dressed in long robes and they had beards. He repeated that the authorities "*do everything*". They had killed all the people of Baraki. He stated that he had left Algeria in November, during Independence Day. This was 2-3 days after the funeral. The appellant stated that he had discovered he could claim asylum when he was in detention. If he had known before, he would have claimed in 2008. There were no questions arising. That completed oral evidence.

- 16.** We then heard submissions. Mr Deller relied on the refusal letter and argued that the appellant's account was very unclear not only as to what had happened, but also as to why the incident should constitute a risk. The perceived weaknesses in the claim were set out in the decision letter. There had been an inordinate delay between arrival and the claim for asylum. He had previously absconded. It was not accepted that he had exited Algeria illegally. Applying the lower standard, and considering all the evidence as a whole, the appeal should be dismissed.
- 17.** Mr Eaton urged us to find that the appellant's account had been consistent and had a ring of truth about it. He had been able to recognise the killers as the men who had come to tell him to stop smoking. The risk arose because he confided his suspicions to his friend and his friend then spoke out about it at the man's funeral. The police found out the appellant had disclosed this information to his friend and so they came after him. There had been extrajudicial killings in Algeria in the past where the authorities committed atrocities in the guise of extremists. We were taken through sections of the country evidence. Mr Eaton also submitted that the appellant had exited Algeria illegally. There would be no protection available to him on return and, as he feared the authorities, relocation was not an option.
- 18.** That completed the submissions. At the conclusion of the hearing we reserved our determination, which we now give with reasons.

### **Findings and Conclusions**

- 19.** In reaching our conclusions, we have taken careful account of all the evidence as a whole and the submissions made by the parties. We are mindful of the lower standard to which the appellant has to make out his case.
- 20.** The outcome of this appeal depends on the credibility of the claim as, if the appellant is wanted by the authorities, then we would accept that he has no internal relocation option and would be at risk on return to Algeria. We also accept that in the past the authorities have committed atrocities undercover and indeed that they have acted, and continue to act with impunity. However, having considered the account and the evidence we find that the claim is a fabrication for the following reasons, which are not listed in any order of priority.
- 21.** Given the appellant's ability to recall the date of his departure from Algeria (2-3 November 2007:B12), the date of the killing of the sheikh (25 May 2007: B8), the date of the death of his friend (20 August 2007:B11), the date he returned home from hiding in the village (27

August 2007:B12), the times of various events and distances involved (B8-9, B11), we do not accept that the passage of time has impacted upon his ability to accurately recall other claimed events where there has been so much confusion and inconsistency, particularly not to the extent that the discrepancies can be excused on that basis and, in fairness, Mr Eaton did not seek to argue that.

- 22.** We find the appellant's account to be inherently incoherent and inconsistent. He maintained that he had left Algeria in November on Independence Day. This was also what he had said in his asylum interview (B12). We take judicial notice of the fact that the Algerian Independence Day is in fact celebrated on 5 July. As the killing of the old man is said to have occurred on 25 May 2007, and the appellant claims to have lived in hiding for six months after the funeral, he could not have left Algeria on Independence Day.
- 23.** If the appellant meant to refer to the Day of the Revolution (the date the war for independence commenced), celebrated on 1 November, the time scale still does not fit. The appellant told us that he fled his home after the funeral and that he left the country two or three days later. It is, therefore, unclear why he claimed to have been in hiding for six months as by his own account, the authorities only came looking for him after they had questioned, detained and released his friend and after his friend had fallen to his death trying to avoid a second detention. All this was meant to have occurred in the space of two or three days, if the appellant's oral evidence is to be believed. Yet in earlier evidence, the appellant claimed that his friend had died six months after the funeral of the sheikh. The appellant told us that the first funeral had taken place two weeks after the killing and that, contrary to Islamic practice of a speedy burial, this was not the custom in Algeria where funerals might be delayed for several weeks or months. His evidence to the respondent was, however, that the funeral took place just four days after the killing (B9 and B10).
- 24.** In oral evidence to Judge Freer, the appellant stated that he told his father about his problems on their way back home from the funeral on 20 August 2017 (paragraph 19). If this is a reference to the funeral of the sheikh then it contradicts the earlier evidence. If it refers to the funeral of the appellant's friend, it contradicts his claim at interview that he had not attended the funeral because he had been afraid. It also contradicts his oral evidence to us that he left Algeria two or three days after the funeral (assuming that was a reference to the friend's burial) and his evidence at the asylum interview when he maintained the friend's burial occurred ten days after his death on 20 August 2017 (B13).
- 25.** The appellant claimed in evidence to Judge Freer (paragraph 21) that the authorities came to his home two days after the sheikh's killing on the pretence of recruiting him for military service but he said that he

had told them that as he was 35 years old, he was too old to serve. At his asylum interview he claimed he had not been at home when they came and his father had told him he was not there (B16).

- 26.** The appellant told us that he had been hiding in the village of Ain Defla until he left Algeria. This is also what he stated at interview and initially in his witness statement (paragraph 16). Later in his statement, however, he claimed to have been at his home and that his family kept him hidden (paragraph 24).
- 27.** At interview the appellant stated that he had arrived in the UK on 10 January 2008 (B7), yet there is evidence that he was arrested on 15 October 2008 when he maintained he had just arrived by lorry (paragraph 15: decision letter). He also claimed at that point that he had come here to work. In his witness statement he claimed he had left Algeria for the UK in 2008 (paragraph 1) which contradicts his claim to have left in November 2007.
- 28.** The appellant claimed at his interview in April 2017 to have last had contact with his family 4-5 years earlier because they had left their home in Algiers (B7) but he also claimed to have ceased contact with them in 2010 because he was afraid of the authorities (B16). Although he claimed to have always lived in Algiers (B12) he had forgotten his address (B7). At his screening interview he claimed to have had no work in Algeria (A3) but at his interview he maintained he had been a grocer (B8).
- 29.** At his interview he claimed to have left his wallet or his ID card behind (B9) when moved along by the 'soldiers' but in oral evidence he said it was a bag.
- 30.** He said in oral evidence that three men had approached him and his friends that night in May, out of a group of 10 or 11. At interview he said it was two men (B8). He repeatedly said at interview that it was around midnight and dark (B8, B10) and that he could not see well and thought three men had been involved in the killing (B10). Yet he maintained in oral evidence that he recognised the men as being those who had come and threatened his group of friends. He also claimed that due to the dark the men had not been able to see him return for his bag/wallet/ID card (B14) yet the Rule 35 report records that he claimed he had been seen by them.
- 31.** The appellant told us that his friend had not known the sheikh although he later appeared to backtrack somewhat and claimed everyone in the neighbourhood had known him. This does not explain how the appellant does not know the man's name (B14) or why he initially told us that his friend had not known the man. This is even stranger when his evidence to the respondent was that his friend had been very sad at the funeral when he had started to bury him (B10).

- 32.** The appellant claimed that his friend had been detained for four or five months (B10) and was then released after which the authorities returned to arrest him. Not only does this not accord with the time line, as if the funeral of the sheikh took place several weeks after the killing on 27 May, the friend could not have been detained for that long if he died in August 2007, but it is also not credible. There can be no reason the appellant's friend would be released after a lengthy detention only for the authorities to return immediately to his home to re-arrest him. Nor is it plausible that during such a lengthy detention the authorities would not have discovered that the appellant had been the source of the information. The fact that they took no steps to approach him until after the death of the friend, or if one account is believed that they came to recruit him for military service, does not disclose any urgent adverse interest in him.
- 33.** The appellant gave a lengthy and detailed account of exactly what occurred when the police came for the friend after his release (B11). He claimed he was aware of this information because his brother had informed him. However, the appellant's evidence was also that his brother had been outside the house, on the street, when the police arrived (B12) so he could not have known, so precisely, what had transpired indoors.
- 34.** The appellant claims to have returned home on 27 August (B12) and to have remained there until he left Algeria in early November, despite claiming to fear the authorities and the family of his dead friend. No good reason has been given for this and he has not claimed that any problems befell him during this time. Nor was there any attempt to find him whilst he was in Ain Defla. Given that he claimed that this was his old family home, it is reasonable to assume that the authorities would have looked there for him if he was of interest to them.
- 35.** A Rule 35 report was prepared for the appellant on 23 February 2017 whilst he was in detention at Harmondsworth, prior to the asylum interview. This is included in the appellant's bundle (p.128a-e). In that report, the doctor records that the appellant was seen by the killers and stabbed in the hand with a bayonet on 25 August 2007 and warned not to inform anyone about what he had seen. It is also recorded that the appellant's friend witnessed the killing with him.
- 36.** There was no further reference to this stabbing at either interview, or in his solicitors' subsequent representations or in his grounds of appeal or witness statement. If this is a matter linked to the sheikh's killing, then we would expect it to have featured in the appellant's subsequent account, even if it was mentioned prior to the interview. The appellant told Judge Lal that it was "*not an issue*" (paragraph 14). In evidence to us, he stated that it had nothing to do with the killing



of the sheikh. That was clearly in direct contradiction to what he had told the doctor in detention and what he told Judge Freer (paragraph 23). No explanation has been offered.

- 37.** This matter also raises further difficulties with the account as by his own evidence, the appellant claimed that the authorities had already been looking for him before this date. If they then located him and stabbed him as a warning, they had then shown that that was the extent of their interest in him. Had they wanted to detain him, they could have done so at that time.
- 38.** We were referred to several sections of the country evidence in which it is maintained that the authorities in Algeria act with impunity. If that is the case, we find there would be no reason for them to be concerned about who, if anyone, had seen them kill the sheikh. The appellant, himself, said that the authorities can kill anyone they want and do whatever they wish without any repercussions.
- 39.** There has been an extraordinarily lengthy delay in the making of an asylum claim, given that the appellant entered the UK in 2007/2008. He claims not to have been aware of the procedure but he stated at his interview that he had fled here to claim asylum. We do not accept that in the many years he remained here unlawfully that he could not have sought advice as to his position as he would have known full well that he was here unlawfully. We find that the long delay and the timing of the claim are matters which go against his claim to require international protection and are matters we are entitled to have regard to under section 8. Furthermore, the appellant failed to make an asylum claim in France, Italy or Belgium which he claims to have travelled through.
- 40.** We note that the appellant claimed upon arrest that he had come here to work. We consider that this is likely to be the reason he left Algeria. Indeed, he has since worked without authority in various markets ((paragraph 13 of determination of Judge Lal, paragraph 14 of determination of Judge Freer and paragraph 3 of his witness statement).
- 41.** We do not accept the claim, put at the previous hearing, that the appellant's inconsistent account is due to his limited education. We note that he was able to recall numerous dates of relevant events which, if he was uneducated, would have been meaningless to him. We note that he was able to sign his name on the witness statement and the Rule 35 report and that he was aware of the internet and the concept of 'googling' to locate information (something he mentioned to us at the hearing). These are not matters that an uneducated man would be aware of. We do not, therefore, accept that the appellant is a man of limited education and that this could explain his incoherent account.

- 42.** We find that the appellant's entire claim has been fabricated. We do not accept that any of the claimed events occurred and it follows that we do not accept that the appellant exited Algeria in the manner claimed. He would not, therefore, be viewed as someone who left illegally. Having considered all the evidence in the round and bearing in mind the lower standard of proof, we are not satisfied that the claim has been made out.
- 43.** No health issues were raised before us.
- 44.** There has been no reliance upon article 8. No submissions were made on humanitarian protection grounds.
- 45.** The appellant is also the subject of a deportation order made on 2 February 2018 and against which no appeal has been lodged.

**Decision**

- 46.** The appeal is dismissed on all grounds.

**Anonymity**

- 47.** We continue the anonymity order made by the First-tier Tribunal.

Signed

A handwritten signature in black ink, appearing to read 'R. Kekić' with a small dot at the end.

Upper Tribunal Judge Kekić

Date: 10 December 2018