



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002536

First-tier Tribunal No: PA/55394/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

13th September 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AS
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Reiss of Latitude Law

For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 26 July 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. Following a hearing at Manchester on the 23 May 2023 the Upper Tribunal found material error of law in the decision of the First-tier Tribunal which allowed the appellants appeal on human rights grounds.
2. The appellant is a citizen of Algeria born on 7 March 1976 who is the subject of an order for his deportation from the United Kingdom. He made a human rights

claim which he relies upon in support of a claimed exception to his deportation as contained the UK Borders Act 2007. The matter comes back before the Upper Tribunal today to enable it to hear further evidence with a view to substituting a decision to either allow or dismiss the appeal.

3. There are number of preserved findings from the First-tier Tribunal, which relate to the appellant's immigration status, family circumstances in Algeria, criminality, and identity.
4. His immigration history shows the appellant claimed to have left Algeria in 1999 and travelled to France where he arrived in September of that year. He entered the United Kingdom around 28 December 1999 using a Portuguese passport which he had obtained through an agent and to which he was not lawfully entitled.
5. In May 2003 the appellant claimed he returned to Algeria because his father was ill, where he lived for approximately six months before returning to the UK in January 2004.
6. On 27 January 2021 the appellant was convicted at Manchester City Court for one count of possession/control identity documents with intent and six counts of possessing/control a false/improperly obtained another person's identity document, for which he was sentenced to a total of 12 months imprisonment and ordered to pay a victim surcharge.
7. The appellant was issued with a Notice of Decision to Deport on 2 March 2021.
8. The appellant's witness statements stood as his evidence in chief. The appellant was also supported by a number of witnesses some of whom attended the hearing; although the advocates were able to agree those Mr Bates wished to cross examine before the hearing commenced.
9. In his witness statement dated 10 January 2022 the appellant confirmed where he was born in Algeria and that his father worked as an administrator although he became ill and had to stop working. The appellant claims he has one brother and two sisters and that his parents, brother and sister all live in Bouira in Algeria. His sisters are married and his brother has a learning disability and cannot work.
10. The appellant went to school in Algeria and graduated aged 18 after completing a college course. He states he worked as a labourer and a farmer when there were no building jobs. He claims his family are in a very poor financial position and that his parents and brother are entirely dependent on him to support them.
11. The appellant claims from 1995 the GIA started coming to their village and although they initially made no demands they later demanded food and money and in 1998 and 1999 took control of the region. The appellant claimed in that year, during a routine visit to the village, a splinter group from the GIA came to the village, searched the houses for guns, and that as the appellant had a gun in his house but told them he did not know when it was found, he was immediately considered hostile and was in danger. The appellant claimed that he left Algeria in summer 1999 as a result.
12. The appellant claimed he travelled to France in a lorry entering illegally and stayed a few months while trying to get papers to get to the UK. He states he obtained a Portuguese passport with the money for the same coming from the Algerian community in France which he used to travel to the UK.
13. The appellant admits to using a Portuguese passport whilst in the UK which enabled him to get a National Insurance number. He lived and worked in Belfast for three years claiming he sent the money back to Algeria to support his family.
14. The appellant returned to Algeria in 2003 and attempted to re-enter the United Kingdom using a Portuguese passport but as he did not speak Portuguese he obtained a French passport to start using.

15. The appellant admits to working in London and Manchester using the French passport to prove his right to work, when the use of the passport was fraudulent and he knew he had no such right.
16. The appellant states he attends the mosque most days and every Friday for prayers where there is a close group of friends who support him and who he supports in turn.
17. The appellant has a cousin living in Preston who he sees every few months. He also states his uncle's wife's sister lives in London with her husband and children who he saw regularly when he lived in London. He also has an aunt, her husband, and her children in the UK who he sees around four times a week as they live in Manchester. He claims to be close to his aunt and her children.
18. The appellant claims he remains at risk if returned to Algeria from the GIA because of the events that occurred in 1999. He states that he was able to return in 2003 but they were still asking after him. The appellant claims he will not be safe in Algeria as the authorities cannot protect him.
19. The appellant expresses remorse for what he did in breaking the law leading to his conviction, claiming he worked and paid taxes and sent money home to support the family and establish his life in the UK, and claims not to be a risk to the UK public. The appellant also tries to explain his delay in claiming asylum.
20. In relation to his mother's ill health the appellant claims she is unwell and requires regular treatment which costs money and that she is totally reliant on the money he sends back to Algeria. The appellant claims that treatment is too expensive for him to reasonably afford if he is returned to Algeria, even if he was able to find work.
21. The appellant provided a second witness statement which is unsigned which repeats the core of his claim. He has also provided a more recent witness statement dated 6 July 2023 in which he confirms he has little to add to the core of the claim outlined previously although does seek to address the harm caused by his offending in the following terms:
 6. Although I was not convicted for this, two driving licences were in my possession when I was arrested. I had intended to return the driving licences to their owners after finding them but their addresses were far away and I had forgotten that I had them after the time.
 7. I never used the driving licences.
 8. Despite this, I understand that the owners must have felt anxious or even scared after finding their licences missing. I would have done more to return them. I just forgot to return them but this was wrong.
 9. I was convicted of possessing several false passports. I entered the UK on the Portuguese passport in 1999 and the French passport in 2003.
 10. I have not used any passports for immigration purposes apart from these two times.
 11. I completely apologise for what I have done. I never intended to hurt people in the UK or hurt society in the UK. I fled Algeria through fear and I have done my best to support myself and my family in Algeria. I have worked in the UK, I know I should not have done so but I supported myself and I supported my family with the money I made. I used false documents but I was otherwise honest in my dealings with people and I hope my friends will show me to be a trustworthy and overall honest person.
 12. Despite this, people in the UK have a right to feel secure in the documents they see and in their immigration system. I preached this trust by using the false passports and being in the UK. I know that it has cost the UK taxpayer to bring these proceedings against me and for the time I spent in prison.
 13. Given the chance, I would work and contribute to UK society, I'm a member of a diverse community hearing Manchester and I wish to support them like they have supported me.

22. In reply to questions put in cross-examination the appellant was asked about the driving licences referred to in the statement. He claimed that he had found them but when asked whether he reported this fact to the police he confirmed he did not. When asked why he had not sent them by post to the DVLA he claimed he was not sure what to do. When asked how long he had the driving licences in his possession he claimed one was found and he had had that a little longer than the other one, which did not answer the question.
23. The appellant was asked how much he charged per hour for the services he offered by way of work to which he claimed it depended on what he had to do. The appellant was referred to a claim of £60 per hour in a witness statement and asked whether that was correct to which he stated that was the average though it could be more. He earned about £100 per day, claiming there was lots of competition, but that he could earn between £80 to £100 a day.
24. The appellant was asked whether he accepted cash, but he claimed that as he had no status he could not register.
25. The appellant was asked by Mr Bates whether when he claimed universal credit in the UK that was on the basis of a false identity to which I found his reply evasive. He claimed he came back using the French passport and left it then, referred to not having an identity, then stating that he had a passport in the house which could have been used at the time, but he did not know.
26. Mr Bates put it to the appellant that he received payments for universal credit and would have had access to that money which the appellant claimed they wanted a bank account that he did not have and that he did not know anything about that. When asked whether he was saying the claim was made in the name of a flatmate who had left he claimed it was. The appellant was asked whether he told universal credit authorities of the address to which he stated he sent something from that end regarding money.
27. The appellant was asked when he last worked illegally in the UK, but he stated it was before he was arrested. He claimed not to have worked since. The appellant was therefore asked how the family in Algeria were supported if he was not working to which he claimed he was the only one working who would help them and that they would not be able to survive without his help. This did not answer the question.
28. The appellant was asked about his cousin and aunt. He claimed he was a person in the UK. He claimed the cousin did not send money to the family in Algeria. The appellant's cousin has provided a witness statement. He lived with the appellant's sister in the UK who had attended court and when asked again by Mr Bates how much money they sent to the family in Algeria he claimed a small amount to cover their expenses and medical bills. When asked whether there was evidence of the costs of these items the appellant stated there was not.
29. The appellant was asked about the language of documents that had been provided which the appellant claimed was a description of the medical treatment from the family clinic, but he claimed he could not access the same to help them. They are in French.
30. The appellant was asked whether his cousin could continue to support the family which he claimed he could not, but when asked why not if the appellant was returned to Algeria he claimed he is the person who could do so.
31. In light of the evidence from other witnesses of the appellant's skills as a handyman he was asked why could not support himself and the family back in Algeria doing such work, to which he made reference to not being able to afford the materials and not being able to work, but could not provide a satisfactory answer when Mr Bates pointed out to him that it will be customers who are paying for the materials.

33. The appellant was asked further related questions about matters arising from the evidence. The appellant confirmed he has been in the UK consistently since 2003.
34. The appellant was then cross-examined by Mr Reiss. He claimed he had worked in Algeria earning approximately £30 per month.
35. The appellant has provided a number of witness statements in support of his case one of which is from a GP, Dr Ledi dated 7 July 2023. Dr Ledi confirms her address, date of birth, the fact she has been in the UK for around 32 years and is naturalised as a British citizen and is a medical doctor and paediatrician working in Warrington.
36. Dr Ledi states she only recently became aware of the appellant's offending but indicated its effects on her had been minimal. She identified the only way it affected her and others who know him is that he was missed during the time that he was in prison.
37. Dr Ledi refers to the appellant as a person whom she trusts. She has always felt comfortable leaving him alone whilst he undertakes refurbishment work on her house, so much that she has recommended his handyman services to many within her Arabic and Muslim community. It is claimed the appellant has never made a mistake that has caused her detriment, she has never had problems with him with regard to money, that he offers reasonable prices, and has never claimed money from the state to her knowledge. Dr Ledi stated the appellant works free for refugees who have no money, is not a person who creates problems or arguments, and is popular within the community. Dr Ledi states the appellant's presence in the UK is of benefit to the country.
38. In reply to questions put in cross examination Dr Ledi confirmed she was happy leaving the appellant in her house or garden. When asked what rates the appellant charged she stated it was £60 for gardening per hour.
39. Dr Ledi originates from Algeria and when asked whether the appellant had mentioned to her his lack of leave in the UK she stated he had not. She confirmed the appellant started working for her 2000 and had helped out frequently since then.
40. A further witness confirmed their statement was true, that they have siblings in Algeria who they are in contact with, and that if the appellant was returned to Algeria he would recommend him to his family. When asked whether the witness was aware the appellant was in the UK illegally when he did work for him the witness stated he did not know but that he did not ask him.
41. The appellant has provided other witness statements containing a character reference all of which I have noted and taken into account.

Discussion and analysis

42. As noted in the Error of Law finding there was no challenge before the Upper Tribunal to the decision of the First-tier Tribunal that there was no evidence to support the claim under the Refugee Convention or to show that the appellant has a well-founded fear of persecution for a Refugee Convention reason and that he will not face a real risk of persecution or harm if returned to Algeria, leading to the appeal being dismissed on protection grounds. This is therefore a human rights appeal only.
43. In relation to section 117 of the Nationality, Immigration and Asylum Act 2002 it was conceded by Mr Reiss on behalf of the appellant he could not satisfy section 117C(4)(a) or paragraph 399A of the Immigration Rules. The only avenue therefore open to the appellant was to show there were very compelling circumstances over and above the exceptions to deportation sufficient to displace the public interest in his deportation. In his skeleton argument in relation to compelling circumstances 'over and above' Mr Reiss writes:

Very compelling circumstances

20. The sentencing remarks of Judge Leeming confirm that the Appellant pled guilty at the first reasonable opportunity – he was awarded the full third deduction to his sentence. Judge Leeming also confirms that this was the Appellant's only conviction and that he had laudable motives for his actions, namely, sending money to his family for their support (RB7).
21. This, along with the Appellant's more than 20 years residence amount to very compelling circumstances over and above the exceptions set out in the Immigration Rules.
22. After fleeing Algeria, the Appellant has made his life in the UK. But for one absence between May 2003 and January 2004 he has lived in the UK for a very long time.
23. The Appellant's family in Algeria are all unwell. His father and mother require regular treatment and his brother is disabled. The Appellant has worked while in the UK so that he can provide money to his family for their wellbeing. The Appellant acknowledges that he should not have done this but his motives, as confirmed by Judge Leeming, were laudable even if his actions were not. Deporting the Appellant will result in him returning to Algeria where he will have no support. He supports his family, they are in no position to reciprocate when he returns to Algeria.
24. This would be particularly difficult for the Appellant. He would return to Algeria to watch his parents deteriorate whilst he was unable to help. His support from the UK is the lifeline to his 3 family. To be removed simply to watch helplessly as his family's health deteriorates is a very compelling circumstance.
25. Although the Appellant's crime was serious, reflected by a 12-month prison sentence, it was at the lower end of the spectrum for offences of this nature. Judge Leeming confirms that one charge could result in a sentence of 2 years imprisonment. The Appellant received a total sentence of 1 year, albeit each sentence was concurrent. This reflects the relative severity of the Appellant's offending.
26. It is not wrong to suggest that his offending was towards the less serious end of the spectrum as he faced a maximum sentence of 12 years (6 2-year sentences running consecutively).
27. No offending is 'victimless' and all offending is serious. However, different offences engender public sympathy or disgust in different measure. The Appellant was convicted for the possession of false documents. The Appellant did not harm an individual and, the offences notwithstanding, he has proven himself to be an honest and respected member of his community. Various witnesses attest that he is otherwise of good character and his offending caused little harm.
28. The Appellant does not pose an ongoing threat to the security of the UK nor is there a risk of his reoffending – if he receives a visa he will not use false documents. The Appellant remaining in the UK will not result in public revulsion. The Appellant is not a violent or predatory offender. The Appellant obtained documents to use as a 'safety net' as confirmed by Judge Leeming. He has worked and has paid taxes. Should he be permitted to remain in the UK he will resume working and contribute to the UK by way of tax receipts.
29. The Appellant should not have worked but he has shown he will not be a burden on the public purse if permitted to remain. He will work and contribute by way of tax receipts.
30. Although the public interest is always in favour of the deportation of foreign criminals, the public interest is not a static threshold. This is confirmed at s117C(2) of the Act. The less serious the offending the lower the public interest. It is submitted that the Appellant's offending is at the lowest possible level of severity to engage the public interest.
31. Although the Appellant's specific private life in the UK should be given little weight per s117B of the Act, he has raised very compelling circumstances over and above the exceptions in the Act. His private life therefore outweighs the public interest in his removal as he meets the necessary exception.
32. The decision is unlawful and the appeal should be allowed.

44. In his submissions Mr Bates relied upon the reasons for deportation, including the comments of the Sentencing Judge regarding deportation to Algeria.
45. Reference was made to the Country Policy and Information Note: background information, September 2020 relating to Algeria, the latest version of this document, which notes that paragraph 7.3.2 the unemployment rate in Algeria decreased to 11.4% in the second quarter of 2019, refers to individual healthcare available services, supporting the submission it was reasonable for the appellant to return to Algeria where he will be able to obtain employment and that there is access to medical services if required, including for his family.
46. It was submitted that even though individuals are claiming not to be aware that the appellant was in the UK illegally when he worked for them, it is clear that he has transferable skills as a handyman.
47. I find weight can be placed upon the submission of Mr Bates that the appellant's claim has been throughout that he needs to work so he can support his family yet claims that he has not worked since he was convicted, yet there is no evidence of an adverse impact upon the family. It is now 2023. It is clear that the family in Algeria survived whilst the appellant was in prison, and it appears from the evidence it was only at the hearing today that the appellant advanced the explanation that his cousin in Manchester had provided support. There is merit in the submission that the appellant has not mentioned the existence of support for the family from this or any other source of his witness statements. I find this is evidence of a lack of credibility in the appellant's accounts and an attempt to manipulate the evidence to try and make it appear as if it will be catastrophic for his family in Algeria if he is not allowed to remain in the UK. I do not find it credible the support the family currently enjoys will end if the appellant is return to Algeria. The appellant has not provided sufficient evidence to support such a claim.
48. I find there is insufficient evidence to show what the family in Algeria would need to live on, including if the appellant is returned, or medical costs. Or that the same could not be met.
49. I accept the appellant has formed a private life in the UK with the family members he visits, through the mosque, and with his friends and associates, and that he is a very popular and liked individual. In terms of the weight to be given to his private life the reality is that the appellant has never had a right to legally remain in the United Kingdom. He entered illegally using a false Portuguese passport in 1999 and returned in October 2003 using a false French passport to which he was not entitled. His whole presence in the UK has, effectively, been one large act of deception. He has held himself out as having a right to enter and remain in the UK as an EU citizen when he knew he had no such right as a citizen of Algeria. He obtained a National Insurance number which he used to obtain work, which may have deprived a UK national or other person lawfully entitled to work of an employment position. Mr Bates asked the appellant about a claim for Universal Credit, and I did not find his answers persuasive when denying any knowledge of an application or receipt of funds from the same. It appears that the claim was made using passports the appellant had in his possession. Similarly I do not accept the appellant's evidence in relation to the possession of the two driving licence and his claim he obtained them innocently, had never used them, and did not know what to do with them. His continued possession gives rise to the question of why he had them and retained them and, in light of his practice of using false documents and gaining a pecuniary advantage by the use of such false documents, one has to question what use he made of the licences.
50. Section 117 B is relevant to the weight that may be placed upon his private life. Although it has been formed over a very extensive period it is clear that this is

only as a result of the act of deception, and I find that little weight should be placed upon the claimed private life.

51. In relation to the question of whether there are very compelling circumstances, pursuant to section 117C(6), I do not find such circumstances are made out. The appellant has no family life in the UK, there is a very strong public interest in deportation to deter use of false documents and a strong public interest of having strong and workable immigration control. This is not a near miss scenario or one in which the appellant has shown that the consequences of removal will result in consequences sufficient to outweigh the public interest. "Very" imports a very high threshold. "Compelling" means circumstances which have a powerful, irresistible and convincing effect- see [SSH D v Garzon \[2018\] EWCA Civ 1225](#) .
52. In relation to medical needs, the parents' documentation said to be relevant has not been translated, there is no independent medical evidence of the needs of the family, no evidence showing that the appellant could not work. I do not find threshold has been met on the facts of this appeal.
53. The appellant had worked illegally in the UK, not paid National Insurance, Mr Bates raised the question of whether the appellant had charged the minimum wage, together with the lack of clarity as to the extent he worked illegally and the income he received.
54. I have taken into account the skeleton argument produced by Mr Reiss and his concession under the Rules and section 117. I note his argument the medical documents are not illegible and did not need translations, and that the witnesses attended. It was suggested there is no risk of ongoing offending, no illegal working or further offending since the appellant had been convicted and that he had served his sentence. The appellant had been unwell in the past and it is argued he would have no financial support if returned. It is submitted there is clear evidence of matters over and above the exceptions in support of the appellant's case. It was argued although the appellant had worked illegally and not paid tax, there was sufficient to outweigh the public interest.
55. In relation to the appellant's family members, they reside outside the UK or the territory of a High Contracting State to the ECHR. Whilst they form part of the appellant's private life that is not his private life in the UK. This is not a case in which it has been established that the UK has ever exercised extraterritorial jurisdiction over Algeria such that they owe an obligation under the Human Rights Act to the appellant's parents. It has not been established that the UK has ever exercised authority and control over that country sufficient to engage the U.K.'s obligations to protect the human rights of the appellant's parents. Similarly although the appellant undertakes a number of other tasks in the UK it has not been established that others would not be able to undertake such tasks or that the impact of him not being able to do them himself will engage any obligation under the ECHR in relation to either the appellant's private life or the human rights of those who may be affected, sufficient to tip the balance in the appellant's favour.
56. I find, notwithstanding the length of time the appellant has been in the UK, that he has not substantiated his claim and that the Secretary of State has established, when weighing up the competing arguments, that the decision under challenge which will interfere with the appellant's private life in the U.K. is proportionate.
57. On that basis I dismiss the appeal.

Notice of Decision

58. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

1 September 2023