



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/12151/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Bennett House, Stoke-on-Trent  
On 4<sup>th</sup> April 2017**

**Decision & Promulgated  
On 9<sup>th</sup> May 2017**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**L R  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Christina Alfred (Counsel)  
For the Respondent: Mr Chris Bates (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Collier, promulgated on 9<sup>th</sup> November 2016, following a hearing at Nottingham Justice Centre on 20<sup>th</sup> September 2016. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellant**

2. The Appellant is a citizen of Algeria, was born on 6<sup>th</sup> October 1972, and is a male. He appealed against the decision of the Respondent dated 8<sup>th</sup> September 2015 to refuse his application for asylum and humanitarian protection.

### **The Appellant's Claim**

3. The Appellant's claim is that this was a case where in a previous determination by the Tribunal, namely, by IJ Astle on 4<sup>th</sup> November 2008 (see appeal number HX/25308/02) the judge had allowed the Appellant's appeal against refusal of asylum, on the basis that human rights violations by the authorities take place and that the GIA are still active (see paragraph 42). However, before the Secretary of State could grant the Appellant asylum, it transpired that he had been convicted of rape in the United Kingdom, such that it fell against the public interest to grant him the right to remain here given the gravity of his crimes in this country. Instead, the Appellant had been granted discretionary leave to remain. IJ Collier observed how, "this was temporary leave and this was granted on the Appellant's release from prison in 2003" and there was no way that the Respondent would have granted the Appellant refugee status on release from prison. The issue now was whether the Appellant could demonstrate a current fear of lack of protection in Algeria. The reality was that matters had moved on considerably since the Appellant left Algeria. There had been an amnesty declared. There was also the shift in respect of the leader of the organisation that the Appellant was said to fear in Algeria. He was simply a person of lower interest and would be of no fear to the Algerian state. Insofar as there were any medical problems medical facilities were available in Algeria (paragraph 10). The argument on behalf of the Appellant, however, was that, by failing to implement the decision of Judge Astle in 2002, the Secretary of State was engaged in an abuse of power and acting unlawfully. The judge eventually rejected this argument after a lengthy determination of 126 paragraphs, observing that, in refusing to grant the Appellant full refugee status the UK was not in breach of any of its obligations (see paragraph 126).

### **Grounds of Application**

4. The grounds of application state that the judge failed to engage with arguments put forward on behalf of the Appellant to the effect that the earlier recognition of refugee status by the Immigration Tribunal was relevant to whether the Appellant should have been granted a longer period of leave to remain in the UK on Article 3 grounds.
5. On 21<sup>st</sup> January 2017, permission to appeal was granted by the Upper Tribunal on this basis, although it was expressly stated that it did not appear to be arguable that the Respondent should have granted ILR in such circumstances to the Appellant because it has long been the practice of the state to grant a period of limited leave to remain only in such circumstances.

### **Submissions**

6. At the hearing before me on 4<sup>th</sup> April 2017, Ms Alfred, appearing on behalf of the Appellant, relied upon the Grounds of Appeal and made the following submissions. First, the starting point in this appeal was the decision of IJ Astle in 2002 whereby the Appellant's claim to refugee status

was recognised. Once the decision was promulgated the Secretary of State should have implemented that decision in the Appellant's favour and granted him full asylum refugee status, which would by now have led to the grant of indefinite leave to remain. Second, the refugee status of the Appellant had not been revoked even following the very serious offence of rape. In fact, the authorities have decided not to take any further action against the Appellant. He has served his prison sentence. He should now be granted ILR. He came in 2000 and has been in this country for seventeen years. He is not married. He has no one in Algeria. He has nothing to return to there. His entire life is in this country.

7. For his part, Mr Bates submitted that, whilst it was accepted that in October 2002 the Appellant's appeal was allowed by IJ Astle (who was unaware of the fact that the Appellant had been convicted had been guilty of rape), this was not the starting point for the purposes of the subsequent proceedings. It was significant that on 1<sup>st</sup> November 2002 the Appellant was convicted of rape and sentenced to five years. In these circumstances, the Secretary of State decided not to issue a recognition of refugee status document. It was unfortunate that there was a very close proximity in time between the allowing of the appeal on Refugee Convention grounds by Judge Astle in October, and the commission of the Appellant for rape in November. Nevertheless, the best that the Appellant could have hoped for was the grant of discretionary leave to remain, and this he was granted once he came out of prison. He would have been entitled to six months' grant of discretionary leave which were renewable until such time that he was returnable back to Algeria. Except, however what the Appellant did was to make an application for private life rights under Article 8 on 13<sup>th</sup> January 2015. Judge Collier made his decision in the context of this background information. The fact was that the situation in Algeria had changed significantly since the time of Judge Astle allowing the Appellant's appeal. This was clear at paragraph 10 of Judge Collier's determination. It is this which is the starting point for this appeal. The GIA terrorist group no longer exists in Algeria. Permission to appeal in this case should not have been granted. All that the Appellant could ever have hoped for was discretionary leave and Mr Bates relied upon the case of **MS [2015] UKUT 00539** in this regard.
8. In reply, Ms Alfred submitted that the Home Office had refused to grant the Appellant refugee status as they should have way back in 2002. There was a covering letter dated 22<sup>nd</sup> November 2004 which was to the effect that the Home Office "takes a serious view of your conduct" and considers "the question of your liability to deportation", but decides "not to take any action against you on this occasion". This was in 2004. On the other hand, the Home Office had 28 days to appeal the decision of Judge Astle. It chose not to do so. Ms Alfred, however, accepted that there had been no judicial review application at any stage to enforce the decision of Judge Astle so as to compel the Secretary of State to grant the Appellant full refugee status.

### **No Error of Law**

9. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) for the following reasons. First, the Appellant could only ever have been entitled to a grant of discretionary leave to remain for six months, reviewable periodically. This is the case following the Appellant's conviction for rape a month after Judge Astle allowed his appeal, which she did in October 2002, with the conviction following in November 2002. During that brief period of time, the Respondent would have been considering the implications of the decision reached by Judge Astle, but during the process of such consideration, the Appellant was then convicted of rape, leaving the Secretary of State to now take account of fresh facts that had a direct impact on what leave, if any, should be granted to the Appellant. There is no abuse of power in this respect by the Secretary of State.
10. Second, the Appellant made no judicial review application to enforce the Secretary of State to implement the decision of Judge Astle. One can see the reason why this was not done because, as I have said, there was no abuse of power by the Secretary of State in these circumstances.
11. Third, the decision of Judge Collier is not open to a successful appeal because, although the grant of permission states that the issue of the appeal being allowed in 2002 was relevant to whether leave should now be granted under Article 3 grounds, what Judge Collier was looking at was the position as of now, when GIA as a terrorist group no longer exists.
12. Finally, the case of **MS [2015] UKUT 00539** confirms that the current discretionary leave policy (applicable since 24<sup>th</sup> June 2014) as well as his predecessor states that the RLR policy will apply unless exceptional circumstances justify divergence from the policy. Needless to say, there are no exceptional circumstances in this case requiring divergence from such a policy.

### **Notice of Decision**

There is no material error of law in the original judge's decision. The determination shall stand.

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

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

Signed

Date

Deputy Upper Tribunal Judge Juss

8<sup>th</sup> May 2017