



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09330/2017

THE IMMIGRATION ACTS

Heard at: Columbus House, Newport
On 25 May 2018

Decision and Reasons Promulgated
On 30 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

ASD
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr L Garrett, Counsel instructed by Howe & Co
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Telford in which he dismissed the appeal of the Appellant, a citizen of Algeria, against the Secretary of State's decision to refuse asylum and issue removal directions.
2. The application under appeal was refused on 6 September 2017. The Appellant exercised his right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Telford on 25 October 2017 and was dismissed. The Appellant applied for permission to appeal to the Upper

Tribunal. The application was granted by First-tier Tribunal Judge Andrew on 15 January 2018 in the following terms

I am (further) satisfied that there are arguable errors of law in the decision in as much as the judge has not considered the medical evidence of scarring in his decision. However, other parts of the application are misconceived. The respondent does not accept there is a Convention reason in the refusal letter: what it says at paragraph 41 is that the reason given by the appellant "could be one ...". Further, at paragraph 56 of the refusal letter the claim that the appellant has been summoned to do military service was rejected by the respondent. Accordingly, I do not find these to be arguable errors of law.

Background

3. The history of this appeal is detailed above. The Appellant is a citizen of Algeria born on 11 October 1986. He arrived in the United Kingdom in 2007 with a Visa valid until 13 May 2008. After the expiration of his Visa he remained in the United Kingdom unlawfully submitting EEA residence card applications in 2013, 2014 and 2017 all of which were refused. In 2015 the Appellant successfully appealed against the refusal of one of the residence card applications resulting in the application being reconsidered. This reconsideration resulted in the 2017 refusal. On 6 July 2017 the Appellant was encountered and issued with removal directions. On 19 July 2017 he claimed asylum.
4. The basis of the Appellant's claim was that he feared persecution in Algeria because he evaded compulsory military service. At his asylum interview he said that he did not have any problems in Algeria rather they arose after he left. People of his year of birth were being summoned for military service and an Islamic group, Alghoraba, were threatening anyone who joined the Army. The Respondent refused the Appellant's claim concluding at paragraphs 47 to 50 of the refusal letter that his account was not credible and, at paragraph 55 that taken at its highest the Appellant would not face persecution upon return.
5. At the hearing on 25 October 2017 in the Appellant was represented by counsel and gave oral evidence. The Judge dismissed the appeal finding, essentially in agreement with the Respondent's refusal letter, that the Appellant's account was not credible and that he would not face persecution upon his return.

Submissions

6. For the Appellant Mr Garrett said that having discussed matters with Mr Mills the grant of permission to appeal did not appear to restrict the grounds. Mr Mills agreed that from the Respondent's point of view the grounds remained open.

7. Mr Garrett referred to the grant of permission to appeal and said that the First-tier Tribunal Judge had not considered the medical evidence of scarring. This is referred to at paragraph 5.1 of the grounds. It was a central part of the Appellant's claim that he had physical scars sustained while he was in Algeria and the scars had been examined by a Home Office doctor while he was in detention. I asked Mr Garrett what relevance the scarring had to his claim since there was no reference in his statement or in his substantive interview to any persecution or harm having been suffered whilst in Algeria. Mr Garrett referred to the last line of the rule 35 report but agreed that there was no reference elsewhere in the Appellant's evidence. So far as other grounds were concerned Mr Garrett said that the First-tier Tribunal Judge had failed to consider the reasons for the lateness of the Appellant's claim and had placed too much weight on this. Mr Garrett said that the lack of reference to the medical report was his strongest point.
8. Mr Mills said that he could see why the Judge might have granted permission because failure to consider medical evidence is a standard point. However, there is no connection between the Appellant's claim and the scars referred to in this medical evidence. There are some scars to his body which he claims to be the result of shrapnel injuries from a car bomb explosion in 1997. There is no connection between this and his claim. There is the single line in the medical report which suggests that he was arrested and tortured by the police and as a result has a scar on his scalp but again this was never mentioned in his evidence and was not part of his claim. The Judge appears to have considered all the evidence that was before him.
9. I said that it was clear that there was no error of law in the decision of the First-tier Tribunal Judge and that the appeal would be dismissed. I reserved my written decision but at Mr Garrett's request I explained that the reason for my decision was that there was no connection between the Appellant's claim and the scarring identified in the rule 35 report.

Decision

10. The grounds of appeal do not reveal any material error of law. In a detailed decision the First-tier Tribunal judge examines the Appellant's claim to fear persecution because of evasion of military service and firstly finds that the Appellant is not credible and secondly that even if he did face prosecution for evading military service the possible consequences would not amount to persecution or mistreatment in terms of Article 3. The grounds of appeal are largely disingenuous. The Judge clearly explains why he makes an adverse credibility finding (paragraph 27) and separately considers the lateness of the claim and the Appellant's explanation for not making his claim sooner (paragraphs 29-31). The Judge considers the allegation of mental torture at paragraph 37.

11. So far as the medical report is concerned this is the rule 35 report conducted on behalf of the Home Office was the Appellant was in detention. Contrary to Mr Garrett's submission this was never central to the Appellant's claim. The report details scarring received as a result of being in close proximity to a car bomb explosion in 1997. As Mr Mills correctly points out this had nothing to do with the Appellant's claim to fear persecution or serious harm. The report also reveals a scar on his scalp and shows that the Appellants explanation for this as recorded by the doctor was

"on one occasion he was also arrested and tortured by the police. He has got a scar on his scalp from that incident."

There is no reference in the Appellant's appeal statement to arrest or torture whilst the Appellant was in Algeria. Paragraph 8 of his statement refers to his life in Algeria and the onset of problems and there is no suggestion that he was arrested or suffered harm whilst in Algeria. At his substantive Home Office interview, the Appellant makes no mention of detention or torture. The interview took place before the rule 35 report and the statement was made sometime after the rule 35 report. The fact that neither mentions arrest or torture is significant. The chronology of events prepared on his behalf for the hearing before the First-tier Tribunal makes no mention of arrest or torture.

12. There is in my judgement no error of law in the failure by the Judge to mention a rule 35 report which had no connection whatsoever with the Appellant's claim. There is no identifiable error of law elsewhere in the decision. The appeal is dismissed.

Summary

13. The decision of the First-tier Tribunal did not involve the making of an error of law. This appeal is dismissed. The decision of the First-tier Tribunal stands.

Signed:

Date: 25 May 2018



**J F W Phillips
Deputy Judge of the Upper Tribunal**