IMMIGRATION APPEAL TRIBUNAL

MM (Article 3-Article 8-IFA) Algeria CG [2002] UKIAT 01327
CC-23613/2001

Date heard: 18/04/2002
Date notified: 01/05/2002

Before:
The Honourable Mr Justice Collins (President)
Mrs S Hussain
Mr A A Lloyd

MOHAMED MARDI
Appellant

The Secretary of State for the Home Department
Respondents

Determination and Reasons

Citation Number:[2002]UKIAT01327

Representation: Mr A Zaidi of Counsel instructed by White Ryland Solicitors, for the Appellant

Miss A Green, HOPO, for the Respondent.

1. The appellant in this case is a citizen of Algeria. He arrived in this country on 26 January 1998 and claimed asylum two days later. It took until 22 January 2001 for the Home Office to determine his claim and to reject it. He appealed against that determination which involved a direction that he be removed to Algeria because he was an illegal entrant having obtained entry to this country by means of forged documents. The Adjudicator determined the matter on 16 August 2001 and she dismissed his appeal both on asylum and human rights grounds. He appealed to the Tribunal and was given leave to appeal on 2 October 2001 on the basis that the Adjudicator had erred in finding that he had an internal flight option. That was what the appeal was about. It initially came before the Tribunal on 3 January 2002, following a previous application for an adjournment which was refused. Shortly before the hearing the appellant's solicitors had served a lengthy statement from Mr Joffe who is well known as a person who has an interest in north African affairs in general (Algerian in particular) and Mr Joffe has provided reports to the Tribunal in a number of cases. His report was far too long and in the circumstances the Home Office Presenting Officer appearing then, a Miss Lewsey, submitted that she needed time to take instructions on the report and in addition to put in some further country reports from Canada and from Holland. The adjournment was granted on that basis and it was directed that it should be heard at the first open date after one month. Unfortunately it has taken rather a long time to be relisted.

2. When we sat this morning Miss Green on behalf of the Secretary of State, told us that nothing had been done by the respondent to take instructions on the Joffe report or to produce any further evidence. The amazing reason given was that Miss Lewsey's handwriting was illegible and she had since moved to another department or part of the Home Office (it was not entirely clear which) and accordingly the file had simply sat in the office and nothing had been done. If that is the way that the Home Office carry out their business then it is not surprising that we have a huge backlog of claims. It is quite intolerable that the time of everyone should be wasted when the Home Office shows such gross incompetence. Naturally that meant that Miss Green was not in a position to produce anything positive to oppose the report which had been put in from Mr Joffe. That does not however mean that we necessarily accept everything that is said in it and Mr Zaidi has perfectly properly recognised that the report in certain respects is more advocacy than an expert's report should be. But there are certain matters of fact which are raised by Mr Joffe which may be material and so far as those are concerned we see no reason to disregard them.

3. The appellant's case can be stated shortly. He operated what is described as a garage business in a suburb of Algiers. In September and October 1997 he was approached and threatened and assaulted by members of the GIA who were seeking extortion money from him. A substantial sum was demanded, the equivalent of some $10,000. He complained to the police but initially their reaction was that this probably was not serious and there was no need to do anything. But when it happened again they indicated effectively that there was nothing that they could or would do. The appellant accordingly went to stay with an aunt in a rural area while he made arrangements to leave the country and he did so in January 1998. To an extent he was motivated by his knowledge that a cousin of his had been killed by the GIA after failing to extort money from him in 1993. He said that he could not return because he feared the GIA would kill him if he did and that he could not live with his aunt because the GIA were active where she lived. In addition he had married a lady in February 2001 who is a French national but who was originally from Algeria (that was where she was born) but who has not been in Algeria since she was nine years old. They also have a small child who is now some sixteen months old.

4. The Adjudicator accepted the appellant's evidence and decided that he was a credible witness. She was satisfied that in view of the background evidence about the GIA his fear was genuine and more importantly was well-founded as the GIA were well known for attacking civilians and committing acts of atrocity as well as extortion. She decided that there was not a sufficiency of protection and that it was clear that the authorities did not have the will or the ability to provide this appellant with the protection which should be provided by the State. She went on to find that there was no intention on the part of the authorities to try to deal with these types of case individually, that is to say to protect individuals who were targeted by the GIA rather than to try to deal with the GIA generally in whatever way they could. In those circumstances the Adjudicator was persuaded that the persecution was for a Convention reason. What she said about that was this:

"17(ii) Members of GIA are clearly acting as a political or religious organisation according to the background evidence. The fact that their acts are criminal and they use blackmail and theft to forward their aims does not make them any less a political organisation. The threats against the appellant were made to obtain money and the

failure to pay will mean that the appellant will be perceived as being an opponent of GIA."

5. No doubt they are a political organisation, but the persecution of an individual must be for a Convention reason and the persecution of this appellant was not in our view and could not reasonably have been decided to have been for a Convention reason. He was being targeted because he had money and because the GIA wished to extort money from him, no doubt for their aims. The reason he did not pay was because he did not want to lose his money and he knew that if he did not pay he would be liable to be killed or at the very least beaten up in a very unpleasant fashion. In those circumstances to suggest that he would be perceived as being an opponent of the GIA and thus that there would be an imputed political opinion which would be the basis for a conclusion that the persecution was for a Convention reason is in our judgment fanciful. There may be circumstances in individual cases where it can properly be said that someone who refuses to do what a group such as the GIA require them to do may be perceived as being against them on political ground. That is no doubt possible. But in a case such as this the suggestion that there is imputed political opinion simply will not run.

6. Mr Zaidi has submitted that it was not open to the respondent to take this point because there is no cross appeal and it had not been raised before this morning. On the other hand the Tribunal is bound to consider on the facts of any case that is before it whether as a matter of law the facts are capable of creating an asylum status. If they are not, then it would be wrong for the Tribunal to uphold the creating of an asylum status merely because there was no specific appeal by the Home Office. We are not here to punish the Home Office and thus create an asylum status. That would in our view be inappropriate. However the findings of the Adjudicator make it clear that the appellant has a claim under Article 3 of the European Convention on Human Rights. It is apparent from her findings that he would face treatment contrary to Article 3 were he to be returned and the State would not be able nor would it be willing to provide the necessary protection. As the Tribunal made clear in the case of Kacai, and that conclusion has been supported recently by the Divisional Court in the case of Dhima, the approach in respect of Article 3 is the same as it is in refugee cases and the principles set out by the House of Lords in Horvath apply equally to both Conventions and it is indeed those principles which have been applied by the Adjudicator in her determination in this case.

7. The reason why the Adjudicator found against the appellant was because she took the view that he would be able to relocate. She dealt with internal flight in these words:

"The appellant says that he has no internal flight option as when he went to stay with his aunt he was still at risk as she lives in a rural area where GIA are active. However he has not suggested that it would be unduly harsh for him to relocate in Algeria and it is clear from the background evidence that there are parts of the country where the GIA are not active. Although clearly some rural areas are very dangerous others are not and the cities seem to pose less danger from GIA members. In those circumstances and as it does not appear likely that his identity is known to any but the few who actually threatened him I find that he has an internal flight option."

8. If one goes back to her resume of the appellant's evidence in paragraph 8 it seems clear that the question of internal flight was not gone into in any depth at all in the evidence that was put before the Adjudicator. She merely refers to his assertion that it was impossible for him to live with his aunt because the GIA were active where the aunt lives and the first sentence which we have just cited from the paragraph in which she deals with internal flight strongly suggests that evidence on the internal flight option was limited to the question of staying with the aunt in a rural area. The Adjudicator was no doubt taking account of what appears in the CIPU Report to which we have also been referred, where in paragraph A6 it is noted that

'"The violence takes place primarily in the countryside and smaller towns as the security forces have largely forced the insurgents out of the cities."

The same point is made in somewhat more detail in B13 of the same report.

9. Mr Joffe in his report refers to recent atrocities in the cities and bomb explosions and suggests that the observations in the CIPU Report are very much over optimistic. But more importantly Mr Joffe says (and there is support for this in the objective reports) that the GIA network is such that they would be able to locate and if they thought it right to take steps against someone such as the appellant who had in the past been targeted by them and who had failed to comply with their requests and had left the country, there would undoubtedly be that risk were he to be returned to any part of Algeria including the cities. As the matter developed before us, Miss Green accepted as we understood it that any internal relocation would have to be to a city because there was undoubtedly still a risk in a country area. But the suggestion made by the Adjudicator that it does not appear likely that his identity is known to any but a few who actually threatened him is not supported by the evidence which is before us. This refers back to what we have described as the network, a matter which was relied on by Mr Zaidi. Mr Zaidi has also made the point that even if an example is not made of him if his presence is discovered, if he becomes successful in any business that he decides to try to set up on return to Algeria he will then again be at risk of the same sort of extortion as occurred in this case. He either goes back and is not successful or works for someone else and runs the risk of being made an example of or he goes back and is successful and runs a risk not only of being made an example of but also of being targeted in the same way as he was before. In addition we have been referred to the chronic housing shortage in the cities in Algeria. That is a factor which undoubtedly is material. The problem is that the Adjudicator did not deal with any of these matters in deciding whether it would be unduly harsh to expect the appellant to relocate. In our judgment on the materials that have been put before us, bearing in mind that we are dealing with the individual circumstances of an individual appellant, it would be unduly harsh to expect him to relocate to a city in Algeria.

10. We have not so far dealt with the position of his wife. Mr Zaidi submitted that that was a factor that we could take into account in assessing undue harshness. There is clear evidence and it is referred to in the CIPU report and indeed all reports, that Westernised women in Algeria may well suffer real problems and the fact that a wife is Westernised may well attract the attention of those such as the GIA whose goal is a Muslim state or rather a state in which the fundamental principles of Islam are maintained. In those circumstances it seems to us the question of whether it would be unduly harsh for the wife to be expected to return is something which does not apply

to internal relocation of the husband because it is a matter which relates to anywhere in Algeria. But it is highly relevant in deciding whether there is a breach of Article 8. The Adjudicator dealt with Article 8 in her determination. It is accepted by Miss Green, and rightly accepted, that her consideration is defective. In particular she refers to the suggestion that the family could go to France. That is a manifestly irrelevant consideration because the appeal was under Section 69(5) against removal to Algeria. That is the decision that is in issue. Miss Green has submitted that there is insufficient information to enable us to reach any conclusions on the Article 8 claim. In our view that is not the case. It seems to us that the Adjudicator decided, and there is no suggestion to the contrary, that the appellant had a family life here. He has a wife and a young child. In our view, applying the approach in Mahmood, the circumstances which include, of course, those relevant to internal flight and in addition the dangers and problems facing the wife, do create insurmountable obstacles to this family being able to set up in Algeria. In those circumstances we are satisfied that this appeal should be allowed on both Article 3 and Article 8 grounds and accordingly the removal directions cannot stand.

MR JUSTICE COLLINS

Decision allowed.