



Upper Tribunal
(Immigration and Asylum Chamber)

OO (gay men: risk) Algeria [2013] UKUT 00063 (IAC)

THE IMMIGRATION ACTS

Heard at Field House
On 4th January, 22nd August and 23rd August 2012

Determination Promulgated

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Before

UPPER TRIBUNAL JUDGE DAWSON
UPPER TRIBUNAL JUDGE COKER

Between

OO

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

- a) *“Sodomy” and “acts against nature with a member of the same sex” are illegal under Penal Code Article 388 and 333 in Algeria and on conviction carry a criminal sentence of up to 3 years imprisonment and/or a fine.*
- b) *Criminal prosecutions of gay men under Articles 388 and 333 are, however, extremely rare.*
- c) *The evidence does not suggest that, as a general matter, societal and familial disapproval of male gay identity in Algeria reaches levels that are persecutory, within*

the meaning of Article 9 of the Qualification Directive or which otherwise reach the threshold required for protection under Article 15(b) of that Directive or Article 3 of the ECHR.

- d) *That conclusion is reinforced by the evidence that the admittedly small number of gay men who live openly as such in Algeria do not, in general, suffer serious harm amounting to persecution.*
- e) *If somebody is able to establish that their behaviour was shaped by more than disapproval amounting to serious harm, they may be able to establish a need for protection. Each case should be determined on the evidence specific to that particular case.*

Representation:

For the Appellant: Ms A Smith on 4th January 2012 and Ms R Chapman on 22nd and 23rd August 2012, instructed by Luqmani Thompson, Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. This is the determination of the Tribunal to which both members of the Panel have contributed.
2. This is an appeal by the appellant, a citizen of Algeria, born on 11th February 1995. On the dates of the resumed hearing before us he was still a minor. His solicitor was present throughout the hearing and his representatives were content that the arrangements for the hearing of the appeal were satisfactory. We followed and applied the Joint Presidential Guidance Note No 2 of 2010 "Child, vulnerable adult and sensitive appellant guidance". Although no responsible adult *per se* was present, the appellant's solicitor was present throughout and the absence of a responsible adult was not said to raise a difficulty. Although the appellant was asked questions for a significant period of time, breaks were given and there was no objection to the length or nature of the questioning. The hearing was held *in camera*. The basis of the appellant's claim is that he fears persecution in Algeria as a gay person. We have used the acronym LGBT in this determination instead of using the phrase lesbian, gay, bisexual, transgender, being the term used by the witnesses.
3. Ms Chapman stated that no point was being taken with regard to the lack of tracing conducted by the respondent (KA (Afghanistan) v Secretary of State for the Home Department [2012] EWCA Civ 1014). Because the appellant was estranged from his father he did not wish any tracing undertaken and he was not, she said, disadvantaged by the failure of the respondent to make any attempt to trace relatives in Algeria. However, if we were inclined to find that his mother was alive, then, she

submitted, KA may be relevant as there was, she said, a “collision” between section 55 of the Borders, Citizenship and Immigration Act 2009 (duty regarding the welfare of children) and the tracing requirements and it may be that in those circumstances she would seek to make further submissions.

4. This appeal, under section 83(2) of the Nationality, Immigration and Asylum Act 2002, is against the decision of First-tier Tribunal Judge W L Grant who dismissed the appellant’s appeal against the Secretary of State’s decision to reject his asylum claim on 28th March 2011 but granted him discretionary leave to remain until 11th August 2012 in accordance with the published Asylum Policy Instruction on Discretionary Leave. On 4th January 2012 it was found that the judge had erred in law in failing to make a finding on whether the appellant’s mother had committed suicide, as claimed, thus rendering the subsequent findings on credibility unsafe; and that the Judge had failed to take into account and assess in reaching his decision evidence before him as to the appellant’s claimed sexual orientation. The decision was set aside to be re-made. No findings were preserved save that he was an Algerian citizen with a date of birth of 11th February 1995; that he had spent some 18 months in France prior to coming to the UK, had been charged with burglary in the UK about 2 weeks after his arrival, remanded in custody in Feltham Young Offender’s Institution and subsequently acquitted.

Appellant’s case

5. The essence of the appellant’s claim is that when he was around 12 or 13 years old he began a sexual relationship with a young man 2 or 3 years older. He claims they were discovered by his parents on their bed, him wearing his shorts, as a consequence of which his mother committed suicide by throwing herself from the window of their third floor apartment; he then fled the family home. He claims he slept rough for a few days until his father, who had been pursuing him, found him and stabbed him in the shoulder. The appellant escaped, received treatment at Mustafa Bacha hospital and subsequently fled to the port city of Ouarhan and travelled by sea to Spain (remaining there for about 4 days), then to France where he remained from 10th November 2008 until 13th June 2010 and then to the UK via Belgium. He is unclear when he arrived in the UK. He claims he is sexually attracted to and enjoys physical relationships with both men and women; he fears return to Algeria because he would not be able to, and would not want to, conceal that he is attracted to both men and women.
6. There was some delay in the appellant submitting his claim for asylum. His age was initially disputed but subsequently accepted. Correspondence between his solicitors and the respondent indicates a history of cancelled and adjourned appointments, illness on the part of the appellant and lack of interpreter during an interview with the respondent, resulting in the fragmentary preparation of witness statements and interviews.

7. The respondent does not accept that the appellant is bisexual or gay or that he experienced the claimed difficulties in Algeria, nor does she accept that his mother died in the manner described or at all; she rejected his claim to be in need of international protection.

Structure of this determination

8. The Tribunal has identified this appeal as a suitable vehicle to provide country guidance on the issue of persecution of gays in Algeria. We deal with this first and thereafter deal with the appellant's appeal.

The Evidence

9. We received evidence from three witnesses offered as expert witnesses: Dan Littauer and Ludovic Lofti Mohammed Zahed attended the hearing to give evidence in person, while written evidence was available from Ms Alison Pargeter. We are particularly grateful to Mr Zahed for having come to the UK from France at less than a day's notice in order to give his evidence. There was considerable documentary evidence before us, a schedule of which is attached. We have had regard to all of this material. We heard oral evidence from the appellant, through an interpreter and have had regard to that evidence, in the round with the documentary evidence.

The Experts' evidence

Ms Alison Pargeter

10. Ms Smith relied upon a written report dated 13th June 2012 prepared by Ms Pargeter but this witness did not attend the hearing to give oral evidence. Ms Pargeter describes herself as an analyst and consultant specialising in political and security issues in North Africa and the Middle East. She has held various academic posts most recently as a Senior Research Associate at the Centre of International Studies at the University of Cambridge where she led a major study on radicalisation in North Africa which was funded by the UK's Economic and Social Research Council ("ESRC") and included Algeria as a case study. She is currently a Senior Associate with Menas Associates, a consultancy firm specialising in Middle East and North African political and economic affairs, and she provides regular analytical contributions for the Jane's Information Group and Oxford Analytica on North Africa.
11. Ms Pargeter's report sets out the history of the approach within Islam to homosexuality. She referred to the lack of the death penalty in Algeria arising from Algeria's broad assertion to be a secular state. Engaging in same-sex activity is illegal and is a punishable offence leading on conviction to a possible term of imprisonment of between 6 months and 3 years and a fine of between 1,000 and 10,000 dinars. She states:

“...whilst the state imposes such legislation [imprisonment, fine], it is rare for it to prosecute people for homosexuality.... largely because homosexuality is a taboo subject and is something that is kept hidden”.

She refers specifically to one prosecution in 2010 and does not give any other examples of prosecution. (This is also referred to in various press reports before us.) She says there are no legal gay or lesbian associations or openly gay venues although there are:

“increasing numbers of gay internet and social networking sites in the country and also a number of known gay venues including nightclubs in various cities. There are also specific areas within some cities where gay men go in order to pick other men up”.

She refers to homosexuals’ fear of being a target of homophobic attacks and states that “homosexuals are forced to live an almost underground existence.” She refers to a 5 July 2000 Maghreb report by the Swiss Federal Office of Refugees Maghreb (Algerie, Egypte, Libye, Maroc, Tunisie) homosexualite et prostitution stating: “Homosexuality has always been tolerated in Islamic countries so long as it is practised clandestinely”.

12. Ms Pargeter says this about the seemingly contradictory situation [3.i] whereby the Algerian state might:

“display a degree of tolerance in so far as it does not actively seek out and prosecute homosexuals, Algerian society has an overtly hostile attitude towards homosexuality... ...As a result homosexuals face severe social stigma and in many cases their own families disown them as they deem them to have brought shame upon the family as a whole....any sign of effeminacy or homosexuality is generally considered a betrayal of these values and codes [physical strength, virility, upholding the honour of the family and tribe]...anyone believed to be homosexual would be considered as an affront to such moral codes [public morality]. Responses range from mockery and isolation to outright hostility...being forced into a homosexual act or being raped is considered to be the utmost of humiliation”.

13. She goes on to describe the complexity of the perception of same sex relationships in Algeria and in [3.v] that:

“...there is a degree to which there is some tolerance of same sex intercourse which is considered as something separate to homosexuality per se.”

She describes this as being drawn from old tribal traditions whereby it was not considered unusual or abnormal for men to engage in sexual relationships with youths, largely as a response to the lack of access to pre-marital heterosexual sexual activity, but that such activities were not talked of openly. She said also that as:

“public religiosity has increased society is far less tolerant of such practices Algerian society today is generally hostile to all homosexual acts and behaviour”.

This was a view that was also echoed by Mr Littauer in his oral evidence.

14. So far as individuals are concerned, Ms Pargeter referred to homosexuals being seen as 'soft targets' by police and security services. She expressed the view that if the appellant were gay or bisexual he would not be able to live openly as a homosexual or bisexual in Algeria. Homosexuality is considered to bring shame upon the whole family; she made the observation that to come across a son "engaged in a sexual act with another man would have been a deeply shocking experience" [4.ii]. She referred to Bab El-Oued in Algiers as being known for its Islamist character, deeply conservative and impoverished [4.iii page A21]: "...public attitudes in Bab El-Oued are likely to have been particularly hostile to any hint of homosexual behaviour. It is true that Mr O could move to another district of Algiers or to another city in Algeria to get away from his father. However as a homosexual or bisexual he would continue to face social stigma and would be forced to conceal his sexuality." This was a view also expressed by Mr Zahed.

Ludovic Lofti Mohamed Zahed

15. Mr Zahed was born in Algeria. He moved to France when he was aged 2 and lived there until he was 15 when he returned to Algeria for 2 years. He holds dual Algerian/French nationality. He returned to France on the basis that by then he knew he was gay and he considered it would be dangerous for him to remain in Algeria as a gay man. He is now aged 35. Until 2 years ago he had travelled to Algeria on holiday to visit family and attend family occasions and celebrations during the summer holidays but he has not been back in the last two years having had a public wedding with his gay partner in South Africa with whom he now lives openly in France. He also had a religious ceremony in France. His partner does not want to travel to an Arab country.
16. He is the founder and spokesman for HM2F (Homosexual Muslims of France) and International Co-ordinator of Calem (Confederation of Associations LGBT, European or Muslim). He has a BSc in psychology, a Masters degree from L'Ecole Normale Supérieure in cognitive studies (psychology and human cognition) and is currently studying for his PhD (Sexual minorities at the vanguard of change of the relationship to Islam) at L'Ecole des Hautes Etudes en Sciences Sociales ("EHESS").
17. He has published a number of articles about Islam and homosexuality on the HM2F website and has written a book on religious dogmatism and being gay - *Le Coran et La Chair* ("the Qur'an and the flesh"); he is co-producer of a documentary examining LGBT and spirituality in Palestine and Israel. He is reported in a newspaper interview as having described himself as a "convinced Muslim" and he has made several large and small pilgrimages to Mecca.
18. HM2F has a membership of about 300, with about 8 council members. It is financially supported by the Paris Municipality and the European Council for Youth. The

organisation has email contacts of about 2000 and Face book groups and Twitter totalling about 3000, making about 5000 in all.

19. In response to a question from Mr Melvin whether he would describe himself as a 'gay activist' he said:

"On a certain point of view I am a gay activist within the Muslim community and this was bad and from another point of view in the LGBT community I am an Islamist, a radical because I talk about Islam and peace and so on, where Islam should be and I am, from some LGBT point of view condemned. So I would say I am a researcher; I like to produce intellectual material that can be used to help other people to reconcile and find their own identity their own way".

20. He was asked whether he was a supporter of gay rights and replied:

"yes if you consider that gay rights are human rights but I am not part of what some intellectuals call the intellectual gay and lesbian lobby."

21. Mr Zahed describes the area of Hydra (where government offices and Embassies are situated) in Algiers as an area where there is a rather more easy-going atmosphere than elsewhere in Algiers or Algeria, such that a gay man can be a bit more effeminate and a lesbian woman a bit more masculine, but that would be as far as it would go. He said that it was simply not possible to be openly gay anywhere in Algeria. When asked about the statement in the US State Department report 2011 quoted in the COIS report that 'some LGBT people live openly in Algeria' he said:

"from a certain point of view you could say that they could survive being more or less open in a certain network...but openly like publicly, not at all."

He went on to say that

"in a neighbourhood like Hydra perhaps it is fashionable to say yeah I am gay to friends and very close friends but publicly, if publicly means openly then it is not possible, especially these years."

22. He referred to an HIV group where gay men meet but said that other groups do not have an office or organise meetings where LGBT people can make contact with each other; any contact between LGBT people would be through the internet or email unless by reason of being HIV.
23. He described receiving teaching as a child from the Imam at the mosque on how to move his hands, how to speak and not speak; he described the need to hide his gender: he said that if a man, one has to be very masculine and the Imams would teach these mannerisms; he recalled trying very hard to 'be a man'.
24. He had studied Salafi Islam (which is associated with literalist, strict and puritanical approaches to Islam) for five years at the mosque in Bab El-Oued. He said that,

coming from the area of Bab El-Oued, he could not imagine being able to “find a space for oneself” although he could imagine that coming from a small village a person could “find a way to escape, to have some space”.

25. He was not aware of any prosecutions in the previous 12 months for homosexual activity. He explains this by way of the intense societal pressure: family members would blackmail men to marry, using the threat of accusing them of some crime or unpaid debt; a man who was raped by another man would not report it for fear of being prosecuted himself, even though he was the victim. He referred to many people not referring to themselves as gay because of the extreme taboo in society – people who are homosexual do not consider themselves homosexual; they might have a sexual relationship with another man but will not say they are gay. He refers to interviews he has conducted in France with refugees who are established and do not need to justify their identity and could say they are gay but do not because of the high societal pressure, it is impossible for them to classify themselves as gay “because it is like a perversion.” He said that families, the neighbourhood and the community deal with homosexuality by way of detention in the family home and/or with violence. He said he had never heard of any ‘honour killings’.
26. In response to a question from Mr Melvin about a report that says there is an area where there is the Cappuccino Bar that is apparently a gay rendezvous point, Mr Zahed replied that although he could not confirm its existence, he would not be astonished to hear that such a bar exists in Algeria and that so far as he was aware there was no evidence of the authorities raiding such a bar.

Mr Dan Littauer

27. Mr Littauer is a journalist with Gay Star News, an on-line news/magazine specialising in particular on LGBT issues in Middle East, North Africa, Scotland and South America. He also writes for Pink News (also on-line) and is the editor of Gay Middle East, a web based news and information based site which started in about 2009. He has written unpublished academic articles on LGBT issues in the course of studying for a PhD. He has not completed his PhD (which he started in 1997), explaining that he had to give up because of funding issues. He described Gay Star News as “objectively reporting the situation on the ground from across different parts of the world and providing a news service.” Gay Middle East has been used as a source by the UKBA (although we could find no reference to this in the current COIR). He has not visited Algeria. He stated that his knowledge of Algeria comes from extensive reading and from correspondence with people in Algeria and Algerians who live outside Algeria who are gay or LGBT.
28. Mr Littauer reinforced what Mr Zahed and Ms Pargeter had said about issues of orientation being dealt with locally, by communities and families. He went on to say:

“If you admit you are gay [by complaining to the police] you are opening yourself to further violence by the police and potential blackmail and this is assuming that the person is educated enough to even come to terms with their sexuality when they have

all this social stigma and taboo; it's very, very difficult, very few people can articulate it and that's why this is very, very rare."

29. In response to a question whether he accepted the evidence given by Ms Pargeter about gay venues or nightclubs in Algiers and other major cities, Mr Littauer replied that:

"... openly gay venues as known in the UK do not exist; there are places where people could perhaps meet for sex but even there it carries risk of arrest, blackmail, abuse, attack...there are spaces where sometimes people can meet informally and certainly not identify openly as gay or lesbian."

30. Mr Littauer's evidence also provided support for what Mr Zahed had said in response to a request for his opinion why there was so little written about LGBT issues in Algeria by respected NGOs or human rights organisations, Amnesty International or Human Rights Watch:

"LGBT organisations in Algeria are very, very weak compared to other countries...from the social stigma shame and it's very difficult to establish and get reports in those circumstances...there is very little information or relatively little compared to other countries."

31. Mr Littauer does not refer to the criminal prosecution of the Imam in 2010 (see [11 & 32]) but states that Articles 338 and 333 are applied regularly and refers to a "young lawyer [being] imprisoned and judged according to these laws" in February 2008 and "In 2008 a young Imam who was convicted of violation of 338 with a minor...he was publicly named the 'paedophile Imam' which put him at permanent death risk in Algeria when he does eventually serve the time for the harsh sentence". No further details of these convictions were provided and there was no indication that in the latter case the Imam had actually served a prison sentence. In his written report Mr Littauer refers to references in *Behind the Mask* to honour killings not being rare.

Country Evidence

32. We were referred to a report of one prosecution (in [21.07] of the Country of Origin Information Service Report ("COIS") on Algeria 3 November 2011): an Imam who had been caught "*in flagrante delicto* in the mosque". Both he and his "companion" were sentenced to 2 years' imprisonment and a fine of 20,000 dinars.
33. The COIS report [21.09] refers to an LGBT Asylum News Blog posted on 13th September 2010 which talks of 'living their sexuality in hiding'. The blog describes cruising as a last resort and although it makes reference to the area of Hydra (a wealthy area of the city of Algiers) comments that a gathering of some 30 or so gay and lesbian individuals is not capable of representing a significant part of the gay community in Algeria. [21.08] quotes an interview in May 2011 with an unidentified person who states he was arrested when he was 17 and that "[the authorities] keep a register containing all the names of gay people in Algeria".

34. The US Country Report on Human Rights Practices 2011, page 25 states:

“The penal code criminalizes public homosexual behaviour for males and females, and there is no specific legal protection for lesbians, gays, bisexuals and transgender (LGBT) persons. The law stipulates penalties that include imprisonment of two months to two years and fines of 500 to 2000 dinars (approximately \$7 to \$27). If a minor is involved the adult may face up to three years imprisonment and a fine of 10,000 dinars (approximately £135).

According to the NGO Heartland Alliance, during the year a woman engaged in grassroots LGBT activism received several death threats and felt compelled to flee the country. There was societal discrimination against homosexual conduct. While some LGBT persons lived openly, the vast majority did not, and most feared reprisal from their families or harassment from authorities.”

35. Asylumlaw.org states

“According to Article 388 of the penal code (adopted June 8 1996) sodomy may be punished with imprisonment from two months to 2 years and a fine of 10,000 Algerian dinars. According to Article 333, an “outrage to public decency” increases the penalties in the case of “acts against nature with a member of the same sex” with a prison sentence of between 6 months to 3 years and a fine of between 1,000 and 10,000 dinars”.

36. Paragraph 21.02 of the COIS report refers to Article 338 of the Penal Code Ordinance 66-156 of June 8 1966 which provides for an increased sentence of imprisonment up to 3 years and a fine of up to 10,000 dinars for the adult if one of the “perpetrators” is under the age of 18.

37. The Bradt Travel Guide – Algeria 2008 in its chapter on gay and lesbian travellers states:

“There is no gay and lesbian scene in the traditional sense in Algeria....discretion is the key for all Algerians. Despite this there is a lot of cruising in the main streets of Algiers city centre...Gay relationships are rare in Algeria and largely only until marriage which is seen as an obligation. Most gay men do get married and father at least one child which is seen as a duty which must be fulfilled. Of course after marriage dalliances are common but relationships remain rare. For this reason many Algerians who would like to live an openly gay life and have a relationship rather than a sexual partner leave the country.”

38. A ‘Lesbian, Gay, Bisexual, Transgender Law and Rights in Algeria’ report in the respondent’s bundle dated 2012 from Discover Algeria refers to there being “little tolerance for homosexuality in Algeria” and that:

“There are many groups that fight for the right of gay men and lesbians in Africa, these groups believe that the Algerian attitudes towards homosexuality can be violent....however many people in Algeria are becoming more accepting of homosexual people. The President of Algeria Abdelaziz Bouteflika stated at one point

that if homosexual people behave well they will be given freedom and remain unharmed. Many people in Algeria wish the constitution of Algeria to be revised in order to take out the segments that demonstrate inequality to both women and gay citizens of Algeria.”

39. A reference to the Country of Return Information Project May 2009 Country Sheet for Algeria in the COIS report [21.13] for Algeria says that:

“..despite homosexuality being quite spread out as a practice, it is invisible as topic or as political demand and its existence is denied by Algerian authorities...Young gay Algerians are stigmatised, oppressed and marginalised. In practice the shame associated with homosexuality means that few individuals openly reveal their sexual orientation. Homosexuals may suffer harassment from the security forces and society in general.”

Legal framework

40. The legislative framework to these appeals includes international and European Union law including the Refugee Convention and the European Convention on Human Rights and the Council Directive 204/83/EC (the Directive).

41. The Directive at Article 9 defines acts of persecution in these terms:

- “1. Acts of persecution within the meaning of Article 1A of the Geneva Convention must
 - (a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
 - (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).
2. Acts of persecution as qualified in paragraph 1, can, inter alia, take the form of:
 - (a) acts of physical or mental violence, including acts of sexual violence;
 - (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory measure;
 - (c) prosecution or punishment which is disproportionate or discriminatory;
 - (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
 - (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);
 - (f) acts of gender-specific or child-specific nature.

3. *In accordance with Article 2(c) there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1.*"

42. Article 10 of the Directive sets out reasons for persecution illustrated in a number of ways including:

"1(d) a group shall be considered to form an innate social group where in particular;

- *members of that group share an innate characteristic or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and*
- *that group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society;*

depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation..."

43. Paragraph 65 of *HJ and HT* [2010] UKSC 31 cogently summarises the basis of protection provided:

"...so far as the social group of gay people is concerned the underlying rationale of the Convention is that they should be able to live freely and openly as gay men and lesbian women, without fearing that they may suffer harm of the requisite intensity or duration because they are gay or lesbian. Their home state should protect them and so enable them to live in that way. If it does not and they will be threatened with serious harm if they live openly, then most people threatened with persecution will be forced to take what steps they can to avoid it."

44. Lord Rodger at [82] sets out the test to be applied by the Tribunal:

- i. When an applicant applies for asylum on the ground of a well-founded fear of persecution because he is gay, the tribunal must first ask itself whether it is satisfied on the evidence that he is gay, or that he would be treated as gay by potential persecutors in his country of nationality.
- ii. If so, the tribunal must then ask itself whether it is satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant's country of nationality.
- iii. If so, the tribunal must go on to consider what the individual applicant would do if he were returned to that country.
- iv. If the applicant would in fact live openly and thereby be exposed to a real risk of persecution, then he has a well-founded fear of persecution - even if he could avoid the risk by living "discreetly".
- v. If, on the other hand, the tribunal concludes that the applicant would in fact live discreetly and so avoid persecution, it must go on to ask itself *why* he would do so.

- vi. If the tribunal concludes that the applicant would choose to live discreetly simply because that was how he himself would wish to live, or because of social pressures, e.g., not wanting to distress his parents or embarrass his friends, then his application should be rejected. Social pressures of that kind do not amount to persecution and the Convention does not offer protection against them. Such a person has no well-founded fear of persecution because, for reasons that have nothing to do with any fear of persecution, he himself chooses to adopt a way of life which means that he is not in fact liable to be persecuted because he is gay.
- vii. If, on the other hand, the tribunal concludes that a material reason for the applicant living discreetly on his return would be a fear of the persecution which would follow if he were to live openly as a gay man, then, other things being equal, his application should be accepted. Such a person has a well-founded fear of persecution. To reject his application on the ground that he could avoid the persecution by living discreetly would be to defeat the very right which the Convention exists to protect – his right to live freely and openly as a gay man without fear of persecution. By admitting him to asylum and allowing him to live freely and openly as a gay man without fear of persecution, the receiving state gives effect to that right by affording the applicant a surrogate for the protection from persecution which his country of nationality should have afforded him.
45. *RT (Zimbabwe)* [2012] UKSC 38 at [24] considered whether there could be a distinction between core and marginally held rights or beliefs and in discussion [40-52] concluded [51] that:

“...nothing...supports the idea that it is relevant to determine how important the right is to the individual. There is no scope for the application of the core/marginal distinction (as explained above) in any of the appeals which are before this court. The situation in Zimbabwe as disclosed by RN is not that the right to hold political beliefs is generally accepted subject only to some arguably peripheral or minor restrictions. It is that anyone who is not thought to be a supporter of the regime is treated harshly. That is persecution.”

Submissions

Respondent's submissions on the country evidence and expert witnesses

46. Mr Melvin submitted that although it was accepted that homosexuality was illegal in Algeria, prosecution and persecution were extremely rare and that it was extremely unlikely that the appellant, even if found to be gay, would be at serious risk of being persecuted. He referred to the expert evidence that there were gay clubs and bars together with networking sites; there was no evidence of ‘honour killings’ and that although there was considerable evidence of the need to portray a macho persona in Algeria there was no evidence that there was persecution of homosexuals. He pointed to the lack of reports by reputable and established NGOs such as Amnesty International and Human Rights Watch that there were serious problems for gay people arising from non state actors. He acknowledged that it may be persecutory if it was established that the cultural dynamic was dealt with at a familial/tribal level but asserted that the evidence of violent consequences was lacking so that was not

established. He referred to what seemed to be an increase in website/blogging and this was how the gay scene was conducted. He drew attention to the references in Ms Pargeter's report to known gay venues including nightclubs. He referred to the lack of evidence of violence and commented that although the community may not accept homosexuality and there may be harassment this did not amount to serious harm. He referred to Ms Pargeter saying that some gays live openly as gays. He relied upon [21.09] COIS report:

"A post of 13 September 2010, on the LGBT Asylum News blog site, called *Being gay in Algeria today*, explored being gay in Algiers:

- Living their sexuality in hiding, the gays of Algeria are taking up more and more public space, but face a reactionary mentality. In this country, where the penal code severely condemns homosexuality, gays are faced with severe difficulties. Alongside this sexual battle, a social struggle also plays out that is crucial to their future.
- Life is difficult. To escape the judgment of others, the only solution is discretion.' [said a 25 year old hairdresser living in Algiers]... He says that men sometimes connect at the gym, while, on the Internet, you can't know who's hiding beneath.
- Unlike some Arab-Muslim countries, in Algeria, gay sites are hardly ever blocked by the government...Farouk, 30, communications consultant, knows the system well. On the Web, it's about setting up rendezvous. In order not to be had, the best thing is to have a webcam, and to meet the person at a neutral place,' The Web is only the first step... Many gays live with either their family or their wife. As a result, precious few gays permit themselves to receive at home. Hotels are the sole alternative. If we show up together at some hotels, the receptionist may find the situation fishy and prevent us from renting a room,' says the consultant. And that's a lost cause, he says.
- If you can't find a place, going to cruising areas is a last resort. And that's where it gets complicated, even to the point of homosexuals being picked up by the police...By nightfall, numerous gays run into each other there. Apart from the fact of playing cat and mouse with the police, they fear being the target of homophobic attacks....'Society rejects us and religion condemns us. In all of this, nobody listens to us.'...
- Hydra, a wealthy neighbourhood on the heights of the capital. It is in this upscale neighbourhood that is found the main unofficial (Officially, Algeria has no gay places.) gay venue, the Cappucino bar. On the terrace, families devour shawarmas, while the gays and lesbians of the capital gather upstairs... Although gays have no freedom, everything's fine at the Cappuccino,' is how Lotfi, a Commerce student, sums it up. But isn't it just a facade? Thirty or so people squatting at the bar are not capable of representing a significant part of the LGBT community living in Algeria."

47. Mr Melvin submitted that Mr Zahed was little more than the founder of and spokesman for an organisation for homosexual Muslims in France, that he was not impartial and that it was difficult to see that he had any reason other than a

subjective reason for coming to give evidence in the appeal. He referred to Mr Zahed's comment that the appeal should be allowed and that it was not possible to assess his ability to give evidence before the Tribunal because he had never before given evidence. He submitted that Mr Zahed was not an expert, was not impartial and was not objective.

48. Mr Melvin submitted that Mr Littauer was unaware of his responsibilities as an expert witness, had never visited Algeria and that his evidence was partial and sourced through gay publications. He considered that the disclosure of the appellant's account to other individuals who had then written in support amounted to 'drumming up support' and that this undermined his impartiality.
49. Mr Melvin relied upon a blog "Gay men in Africa and HIV/AIDS" in the respondent's bundle as support for his submissions although he did not specify in what way.
50. He also relied upon *SA (Algeria) v Minister for Justice, Equality and Law Reform and Refugee Appeals Tribunal* [2008] No 1194 J.R. an Irish case involving a gay Algerian musician who sought leave to challenge the rejection of his application for refugee status by reason of his sexual orientation; the rejection being based "largely due to the *de facto* circumstances of homosexuals in Algeria, but also by reference to the fact that he had failed to apply for asylum during a 2 month sojourn in Spain and France...". The Court concluded that the Tribunal had erred in law by failing to ask itself how the claimant was likely to be treated if returned to Algeria and secondly whether such treatment amounted to persecution. The Court stated that "It may be accepted that the position of homosexuals in Algeria does not equate with that in Iran.....The situation seems possibly closer to the situation in Cameroon...." Mr Melvin submitted that this gave credence to his submission that it was possible Mr O could live openly as a gay man on return to Algeria.

Submissions on behalf of the appellant on the country evidence and expert witnesses

51. Ms Chapman relied upon her skeleton argument, expanded upon this in oral submissions and responded to Mr Melvin's submissions.
52. In essence her skeleton referred to the continuing illegality of homosexuality in Algeria, acknowledged that it was rare for the State to prosecute, referred to the lack of legal gay associations or openly gay venues, submitted that society has an overtly hostile attitude towards homosexuality, that honour killings have been attempted by family members, that gay people are forced into marriage, that the police and military harass and brutalise gay people with impunity, that there is evidence that the police keep a register of gay people, that there are no gay bars or cafes, that gay relationships are rare and that there is little information in the public domain due to inter alia stigmatisation and lack of communication. Since the Arab Spring attitudes have become more conservative.

53. Ms Chapman accepted that the witnesses called as expert witnesses were not experts in the traditional sense but submitted that their evidence was such as could be relied upon. She referred to Mr Littauer's journalistic experience and to the fact that he had specific knowledge of the Muslim world particularly in the context of North Africa and the Middle East; he monitors and writes upon evidence relating to LGBT issues in the Middle East. She submitted that Mr Zahed's evidence, being upon the very discrete issue before the Tribunal, could be relied upon both from his personal experience (a gay man from Algeria) and from his academic knowledge and research.
54. Ms Chapman submitted that the evidence confirms that engaging in same-sex acts is illegal and carries serious penalties if convicted. The experts were broadly consistent with each other and the overall conclusion to be drawn from the evidence was that there were no openly gay venues in Algeria; repression is so extensive that the evidence as to such repression does not emerge through traditional routes, eg NGOs, because they are not reported as matters that affect LGBT people specifically; that prosecution was rare; and that there is no concept of gay identity or a gay scene. People who are LGBT are forced into hiding/being discreet.
55. She accepted that Algerian people may not identify themselves as gay; this does not mean they are not gay but that there is difficulty with the concept of being gay. Whilst she accepts it is possible to have sex as a gay person in Algeria, eg from cruising venues, it was simply not possible to have an openly gay relationship.
56. She submitted it was not an issue of a core or marginal aspect of persona. She was asked to comment on the concept that sexual identity could be seen as a spectrum and that at some stage within the spectrum, sexuality and/or bi-sexuality could be considered to be a choice or a preponderance. She acknowledged that this may be so in some cultures and that some individuals may have a choice but not in the context of Algeria. In Algeria, Algerian men do not identify themselves as gay; that does not mean they are not but that they have difficulty with the concept because of their cultural identity. Consideration had to be given to the possibility of a relationship as a whole and not merely physical contact. She referred us in particular to [76 - 78] and [82] of *HJ (Iran) and HT (Cameroon)* [2010] UKSC 31 and to [24] of *RT (Zimbabwe)* [2012] UKSC 38.
57. Ms Chapman submitted that gay people would be forced to marry; they are not heterosexual by choice; it is not an identity they can choose to exercise.
58. With regards to SA, she submitted that this was not a substantive decision but a permission to appeal. In any event the question posed "whether the applicant is likely to have to endure a severe violation of his basic human rights if he is returned to Algeria in the sense now contemplated by Article 9 of the Qualification Directive [such that]...is it likely he will suffer persecution [having been marked out as effeminate]?" was wrong.

59. She acknowledged that there was no reporting of violent incidents by family or society relating to homosexuality and submitted that this was due to the great taboo in society towards homosexuality and the level of under-reporting reflecting the great reluctance of families and societies to admit to the concept of homosexuality.

OUR ASSESSMENT

Evaluation of experts

60. Mr Melvin argued that neither Mr Zahed nor Mr Littauer were experts and submitted that no weight should be placed upon their evidence. We do not agree. Their evidence is to be assessed by the Tribunal and be given whatever weight the Tribunal considers appropriate. Just as the Tribunal is not bound to accept and rely upon the evidence of a witness who is established to be an expert witness, if there is reason in that particular case not to do so, similarly the weight to be given to the witnesses who gave evidence in this appeal is something to be assessed in the light of the evidence as a whole.
61. We have taken account of Mr Zahed's background: he has written and published on Islam and LGBT. He is coming to the end of his PhD on the topic on which he was giving oral evidence. On the question of how partisan he was, we are satisfied that although some of his expressed views were informed by his personal experience, his own description of himself was nuanced and thoughtful and we are satisfied he was not pursuing a personal crusade or speaking as a political activist on LGBT issues during the hearing. Whilst we note that Mr Zahed has not previously given evidence before the Tribunal, we do not see this to be a reason to consider his evidence to be unreliable. There will always be a time when someone gives evidence for the first time; that does not determine the level of their expertise. We also note, as identified by Mr Melvin during cross examination, that he was not aware of the *Ikerian Reefer*[1993] 2 LILR 68 duties of an expert and that he had expressed an opinion that the appeal should be allowed. Mr Zahed has not met or spoken directly to the appellant. He was asked his opinion and expressed it in the context of what he had been told about the appellant. Mr Zahed drew upon his own experience but, as evidenced by his writings, research and academic work, he displayed an intellectual rigour in his evidence. We are satisfied that he saw his role as assisting the Tribunal in the context of his own knowledge and that his knowledge was gained both from personal experience and through his writing and research. We are satisfied that he correctly describes himself as an expert and we have treated him as such. We have placed considerable weight on his evidence in reaching our assessment.
62. The same cannot be said about Mr Littauer; he is not able to offer the same academic qualifications or background of research. His experience comes from his personal contacts but he has no direct experience of Algeria, never having been there. Nevertheless he spoke with some authority on the issues faced by gay men in the Arab/Islamic world. Despite Mr Littauer's shortcomings, we do not accept Mr Melvin's submission that the witness is on that account to be considered as

disqualified from speaking with any authority. We are satisfied that he has some level of expertise even though insufficient to qualify him as an expert on LGBT issues in Algeria. It was perfectly in order for Mr Littauer to seek additional information from other sources when asked to provide an opinion and although some of the information received was sparse and perhaps could have been written in more temperate language, this does not in itself undermine the evidence given by Mr Littauer. We accept that in giving evidence he saw his role as assisting the Tribunal.

63. It is unfortunate that the Tribunal did not have the benefit of hearing oral evidence from Ms Pargeter. She has impressive academic qualifications and there is no doubt as to the quality of her report. Mr Melvin did not challenge either of these aspects. We were satisfied that her history of academic involvement qualified her to comment with authority on the matters set out in her report. Nevertheless there were what appeared to be some inconsistencies in her report and we were unable to obtain clarification of these; for example that “there were a number of known gay venues in various cities”, “homosexuals were forced to live an almost underground existence”, “there was a degree to which there was some tolerance”, “a gay person would not be able to live openly”, “..forced to conceal sexual identity”, “Algerian society has an overtly hostile attitude towards homosexuality”.

Our conclusions on the evidence as regards country guidance

64. Essentially Ms Pargeter, Mr Zahed and Mr Littauer have given broadly consistent evidence upon which we draw on variously in reaching our conclusions concerning the general situation for gay men in Algeria. The COIS report (see for example [21.09]) reinforces what was said by the witnesses. We confine ourselves to reaching conclusions concerning the position of gay men in Algeria and have not considered the position of transgender individuals or lesbians because the evidence before us does not specifically address the position of such individuals and none of the witnesses was asked to address this issue, which is not before us.
65. There is no dispute that the Algerian Penal Code criminalises certain public homosexual acts (see [35] & [36] above) and, if convicted, a person is liable to a prison sentence of up to 3 years imprisonment and/or fines. However the evidence indicates that prosecutions are very rare. Only one of the prosecutions referred to was substantiated by additional reports; one did not appear to have led to a sentence of imprisonment and the third (in February 2008) was lacking in detail (see paragraph [31]). We accept that homosexuality is the subject of profound societal disapproval such that, as a practice, it is invisible and its very existence denied even amongst men who in fact engage in same sex behaviour.
66. Neither representative referred us to any reports from NGOs such as Amnesty International or Human Rights Watch with regard to gays in Algeria. The position described by Mr Zahed and Mr Littauer was that societal and familial opprobrium manifested itself in blackmail, threats of violence, forced marriage, being locked up

in the family home and accusations of other crimes as punishment. In these circumstances it is surprising that there are no NGO reports detailing these issues.

67. The 'Lesbian, Gay, Bisexual, Transgender Law and Rights in Algeria' report from Discover Algeria, relied upon by Mr Melvin, is unsourced, vague and made up of generalist platitudes. It gives no information on how it reached its generalised statements and it conflated statements about Algeria with wide ranging and non specific statements about "Africa". We found this report to be of little assistance to us in reaching our decision.
68. It is not clear what the Country of Return Information Project is ([39] above). Although there is reference to harassment, this was not described with any particularity. When considered with the other evidence before us these references were very generalised remarks that were not sourced to any incidents. We are not able to place any particular weight upon that report other than as a piece of evidence alongside the other evidence before us.
69. Mr Zahed had not experienced this societal disapproval although a record of one of his interviews to the press indicates that he was under psychological pressure from his family to renounce being gay, that he had been violently assaulted by his brother and that various family members had told him not to return to Algeria after he underwent a civil partnership in South Africa. We note that he said that he had left Algeria to live in France because he felt that it was dangerous but he gave us no specific instances where he had suffered any form of harm or harassment other than by his brother. There is reference by Ms Pargeter to society being "generally hostile", but she gives no examples of how such hostility manifests itself. None of the witnesses gave us any specific examples of individuals being affected in this way.
70. The witnesses and the documentary material before us speak of an inability to live openly as a gay person. All refer to a requirement to "conceal" sexuality, but there is a lack of explanation as to exactly what is meant by this. The US State Department report refers to some LGBT individuals living openly, but they also report that the majority of such individuals did not, fearing reprisal from family or harassment from the authorities.
71. It appears to us that the reference to living openly is living in a manner that does not require a denial of sexual identity and to freely express it subject to legitimate behavioural norms that underpin societies.
72. There is some indication that the web enables more informal contact, although said to be circumscribed by what appears to be a subjective fear of who the other person may be. Although there was reference to some 'cruising areas' and some bars or nightclubs where opportunities for meeting are possible (although still not possible to be openly gay), we accept that there are few places for gay men to meet and that at those that do exist, behaviour is circumspect.

73. The evidence before us from Mr Zahed ([25] above) as to how gay men conduct themselves in France is, in our view, important and capable of informing our examination of the reasons why gay men living in Algeria conduct themselves as they do in respect of their sexual orientation.
74. We do not accept the evidence of Mr Littauer that honour killings are not rare; this was not referred to in the other documentary evidence before us or by Mr Zahed upon whose evidence we place greater weight. We do not accept that there is a register of the names of all gay people in Algeria: this is one quote from an unnamed, unsourced interview.
75. In our view the absence of any recorded adverse treatment which might otherwise have triggered reports is because the few homosexuals who live openly are able to do so without sustaining serious harm and those who are perceived to be gay are not the victims of serious harm within Algeria.
76. What however of the majority who choose to conform to the societal strictures which underpin the taboo against homosexuality?
77. Although both spoke of this in giving evidence, neither Mr Zahed nor Mr Littauer, was able to point to evidence that families enforced their antipathy or hostility towards gay men by serious harm, forced marriage etc. We have taken into account what was said about the weak and unorganised nature of the LGBT community in Algeria and the unwillingness of Algerian gay men to self identify as gay even when they have moved outside Algeria to a country where they are able to live openly. We have also borne in mind the expressed view that anyone believed to be gay would be considered to represent an affront to society's moral code because of a refusal to conform to prescribed norms of behaviour.
78. Ms Chapman submitted that the extent to which individuals would permit themselves to be identified as gay was circumscribed because of the fear of being a target of homophobic attacks. Yet as we have observed above there is no evidence indicating homophobic attacks or serious harm meted out upon an individual who is or was suspected of being gay. Although she submitted that there were "honour" killings, forced marriages and detention in the family home, the evidence to this effect was very generalised with no specific examples given. We were not directed to any specific background evidence to that effect. Mr Zahed said he had never heard of any "honour" killings.
79. We have noted the submission that there was a serious and legitimate fear of the potential of blackmail and abuse from the security forces because of both corruption and criminal penalties and a lack of protection as a victim of violence either pursuant to rape or because of violence meted out through the family or community as a result of being identified as or perceived as being gay. However this submission by Ms Chapman was not based on any accounts of such treatment or reference to any incidents, but rather on an unsubstantiated fear of such treatment. We were only

directed to one prosecution in 2010 and that was over an incident in a mosque. The reference to the two prosecutions by Mr Littauer in his written report was sparse, lacking in detail and there was no substantiation from any other source before us and we find these two references to be of little assistance to us in our deliberations. Nevertheless we are satisfied that the absence of such evidence is likely to be due to the self-restraint exercised by gay people rather than any underlying tolerance or acceptance of gay people.

80. There is evidence to suggest that some gay men in Algeria find it possible to live openly. The question is whether the limited number is because gay men must hide their sexual identity and live discreetly in order to avoid a real risk of serious harm at the hands of those who seek to suppress any manifestation of homosexuality, or whether it is because gay men choose to live their lives in that manner for other reasons; whether that lack of open expression of sexual identity is because gay men fear serious harm or because of the societal disapproval we have identified. Ms Pargeter's evidence is inconclusive. In particular there is no evidence that what she identifies as a compulsion to act discreetly is as a response to coercion. A threshold of severity has to be reached. If living openly does not attract serious harm, which on the evidence before us it does not, people feeling compelled to act discreetly does not mean that the threshold of Article 9 is reached; the fact that a person does not live openly cannot put that person in a better position than a person who does live openly.
81. It follows from the above that the threshold required for protection under Articles 9 or 15(b) of the Qualification Directive or Article 3 of the ECHR is not met.

Conclusions

82. It is not the purpose of the Refugee Convention to reform societies which have less pluralistic values than in the UK (see [15] *HJ (Iran)*). The Convention is concerned with providing protection from serious harm brought about for one of the five reasons stated. International surrogate protection is to be given where there is a serious violation of fundamental human rights or where there is a serious risk of harm in certain situations of internal or external armed conflict. There are forms of pressure on gay men in Algeria and in some circumstances this may amount to harm but on the evidence before us this harm does not amount to serious harm or persecution.
83. Our conclusion on the evidence is that, in general, Algerian gay men do not express their sexual identity openly because of societal disapproval, not because they fear persecutory or other serious harm.
84. There is only limited evidence before us that there is a significant desire to live openly or that it is of particular importance for those who do not live openly that they wish to do so. On the basis of the evidence before us this lack of desire is a

reflection of adherence to and deference to societal mores and not because of an objectively based fear of serious harm.

85. On the basis of the evidence we have heard we give the following guidance:

a) "Sodomy" and "acts against nature with a member of the same sex" are illegal under Penal Code Article 388 and 333 in Algeria and on conviction carry a criminal sentence of up to 3 years imprisonment and/or a fine.

b) Criminal prosecutions of gay men under Articles 388 and 333 are, however, extremely rare.

c) The evidence does not suggest that, as a general matter, societal and familial disapproval of male gay identity in Algeria reaches levels that are persecutory, within the meaning of Article 9 of the Qualification Directive, or which otherwise reach the threshold required for protection under Article 15(b) of that Directive or Article 3 of the ECHR.

d) That conclusion is reinforced by the evidence that the admittedly small number of gay men who live openly as such in Algeria do not, in general suffer serious harm amounting to persecution.

e) If somebody is able to establish that their behaviour was shaped by more than disapproval amounting to serious harm, they may be able to establish a need for protection. Each case should be determined on the evidence specific to that particular case.

Evidence and submissions relating to the appellant personally

Appellant's evidence

Dr Sean Perrin

86. Dr Perrin is a consultant Clinical Psychologist registered with the UK Health Professions Council and is also chartered as a clinical psychologist by the British Psychological Society. He did not give oral evidence. Mr Melvin did not challenge the expertise of Dr Perrin or his standing but drew attention to discrepancies in the information provided by the appellant to Dr Perrin and the appellant's written and oral evidence. Dr Perrin's report was not specific to our determination in terms of country guidance but was specific to our assessment of the appellant's personal account.

87. Although Dr Perrin did not formally assess the appellant's intelligence he commented that his responses and behaviour indicated either low average

intelligence or very little education and that he “clearly needs questions rephrased to suit someone who has a few years of primary school education”. Dr Perrin describes the appellant becoming very upset when asked about his mother – a matter which we also observed during his oral evidence; becoming angry and tearful when describing his experiences in Feltham (which included assault on him) but calm and matter of fact when describing his experiences of sex with men. He records the appellant stating that his overall preference was for sex with men but that he has enjoyed sex with women. He records that the information given by the appellant during his interview accorded generally with that set out in his various witness statements; he does not repeat this information but highlighted specific matters in his report.

88. Dr Perrin describes the appellant saying that when he was selling food in the streets he was approached by older men who would try to befriend him, that Karim was one of these young men who was kind, kissed and cuddled him and that looking back upon their first sexual encounter he now recognises he was raped. In oral evidence the appellant said that these older people were not attracted to him but were bullying him, he thought because they did not want to see him selling things and wanted to be given things which he refused to do.
89. The appellant’s evidence was as follows:
90. As regards his relationship with Karim, in oral evidence:
 - a) He initially said that Karim did not attend school but then said that he did; he gave no explanation for this discrepancy;
 - b) He said he used to meet Karim after school, they would play sport together including football with other boys; Karim had initially kissed and cuddled him and then they had sex when the appellant was aged about 12 or 13 years old. The appellant describes this as ‘messaging around’ and that he thought what they were doing was normal. He also said that he decided he did not want to “do this again” but Karim had said that if he did not continue to have sex with him he, Karim, would tell his father.
 - c) He was bullied by other boys. He thought this was because they did not like his friendship with Karim because he had recently moved into the area. He was not called names with regard to his relationship with Karim;
 - d) He said he would usually have sexual relations with Karim at his, Karim’s, family home; his parents and brothers were often not there but he was not aware why that was;
 - e) The time when his mother threw herself out of the window was, according to his oral evidence the first time he and Karim had been together at his home

although in his witness statement dated 15th February 2011 he said that when his home was empty they would go there. This discrepancy was not explained.

91. As regards to the incident which led to his departure from Algeria:
 - a) The apartment has a sitting/dining room space and his parents had their own room. He and Karim were on his parents' bed; he was in shorts. There was a door separating the bedroom from the rest of the living space and the appellant had not heard anyone coming into the flat.
 - b) His mother and father had been to mosque and on their return had come into the bedroom and seen him and Karim on the bed together; he was wearing shorts, he did not say what Karim was wearing.
 - c) His mother on seeing them had thrown herself out of the window.
 - d) He ran from the apartment whilst his father was looking out of the window.
92. The appellant describes his father's behaviour to him and his mother as violent and aggressive. He gives examples of being locked up, beaten and severely chastised. He describes severe restrictions on his mother's ability to move outside the home; that she was only allowed out when in the company of his father. There is a slight discrepancy in his oral evidence: she did not leave the apartment at all without his father/she used to visit other women in the apartment block.
93. The appellant described being found by his father in the park after he had fled, his father stabbing him and some people taking him to hospital. His evidence is again slightly contradictory: that he fled to a hospital that was not a local hospital because he feared his father would find him (witness statement 15th February 2011) or that someone saw him bleeding and took him in the car to hospital (oral evidence). There was no reason provided why they took him to a hospital that was not local, particularly since he had escaped from his father. He did not give evidence that he had explained to them why he had been stabbed and why he did not want to go to the local hospital.
94. The appellant went to his mother's funeral; he says he discovered when and where it would be (2 hours away by bus) from hearing prayers at the mosque the next day.
95. Since leaving Algeria the appellant claims to have had a number of sexual relationships:
 - a) In his witness statement dated 12th March 2012 he refers to an 18 month relationship in France with a girl (Alicia) and a relationship with a man (Yazid); he lived in the same house as them. In oral evidence he described the household within which he lived as being lesbian and gay. He states that since arriving in the UK he has had a sexual relationship with one girl (Shardi) who was friends

with a lesbian couple. This is referred to in his March 2012 witness statement and in oral evidence he said he had met her between 6 and 8 months ago and it had lasted about a month. He states in written evidence that he has not been able to meet men with whom he could have a sexual relationship because of his age and because he does not speak English very well; he says this is not his choice.

- b) In oral evidence the appellant said that he has had one male sexual relationship with Hassan whom he thought was from Sudan and whose mother he thought lived in Saudi Arabia. He could not recall when it was other than after his relationship with Shardi had ceased and nor could he recall how long it lasted. He was no longer in contact because he had lost his phone. There is no reference to this relationship in any of his witness statements including his handwritten witness statement dated 22nd August 2012.
- c) In his interview with the respondent he describes Alicia as a girlfriend and makes no reference to homosexual relationships in France.

96. Mr Melvin asked Mr Littauer to comment on the reference in the COIS report [24.26 to 24.32] that the Algerian government pursue a policy of education for the youth of Algeria until 16 years of age primarily to avoid the mosques taking over the teaching. Mr Littauer responded that although the government may wish to engineer some secular national identity, that is unsuccessful; children are sent to work instead of going to school and completing their education. [24.02] of COIS refers to declining school completion rates, a recent study on child labour revealed that more than a quarter of children are working and ambitious plans to introduce universal education have yet to materialise.

Submissions in relation to the appellant personally

- 97. Mr Melvin did not challenge the expertise of Dr Perrin or his standing to give a report but drew attention to discrepancies in the information provided by the appellant to Dr Perrin and the appellant's written and oral evidence. In so far as this personal account was concerned Mr Melvin disputed that the appellant was gay or bisexual; he disputed that the appellant's mother had committed suicide, disputed that his father had stabbed him, disputed that he had ceased attending school and was selling commodities on the street and asserted that contrary to Dr Perrin's opinion the appellant was resourceful and sophisticated and able to tailor his evidence according to the questions asked and how this corresponded to his account.
- 98. Our attention was drawn by Mr Melvin to the appellant's inability to recall dates of relationships in contrast with his ability to remember exact dates as to when he left Algeria and when he left France, the very late disclosure of his claimed relationship with Hassan and the vagueness of his description of the relationships he had. He drew attention to the very late disclosure of the relationship with Yazid and the lack of corroborative evidence despite it having lasted so long; there had been no attempt

to write to Alicia or Yazid. He asserted that the discovery of him and Karim by his parents was totally implausible and went so far as to describe it as fiction. He submitted that the suicide of his mother in the manner claimed was totally implausible and his explanation for his attendance at the funeral implausible. He referred to the appellant's curious ability to lose mobile phones. He drew attention to the lack of any reference to depression or self harm whilst he was in France and that although treatment has been recommended by Dr Perrin, there was no evidence that the appellant was receiving any treatment for any of his claimed problems other than paracetamol.

99. Ms Chapman referred to Dr Perrin's opinion that overall he had "found the appellant one of the few male, Muslim boys who could talk openly and calmly about sex with men. Overall I found him to be a credible informant of his own history and functioning." She acknowledged that there had been no further treatment as recommended by Dr Perrin but explained that he had been referred but because he had moved areas, he was now awaiting referral to the community Mental Health Service from a different area. The lack of follow up treatment should not therefore be considered adverse to his claimed account.
100. Such discrepancies and contradictions as there were in the appellant's evidence did not, Ms Chapman submitted, reflect adversely on the overall credibility of the appellant's account but were reflections of the fragmented manner in which he had been able to provide his evidence, the trauma he was suffering from and that he was and remains a minor. He had clarified that his relationship with Alicia was not exclusive; that his description of how he and Karim were treated by other boys was a difficult question and involved difficult concepts which may be difficult to translate. It was not known whether he gave an accurate explanation and in any event it is not possible to 'second guess' the motives of persecutors.
101. Ms Chapman submitted that his inability to find same-sex partners was plausibly related to his age; he would not be admitted to gay clubs because of his age, he cannot disclose his sexuality to the Algerian community within which he mixes. He is isolated both from the Arab community and as a gay Muslim.

Our Assessment

102. Applying the lower standard of proof we believe certain aspects of his account for cogent reasons; we disbelieve other aspects. In reaching our decision we have taken full account of the appellant's youth, the fragmentary manner in which his evidence was disclosed through no fault of his own and the mental health diagnosis.
103. We have taken note of Dr Perrin's assessment of the appellant as being overall a credible informant of his own history and functioning. We note that Dr Perrin says he is one of the few Muslim boys able to talk openly and calmly about his sexuality. We do not know how many Algerian Muslim teenage boys Dr Perrin has

interviewed. Nor do we know what account Dr Perrin took of the situation in Algeria when reaching this opinion.

104. Dr Perrin has not commented upon how, having regard to the young age of the appellant, with the limited education he has had, coming from such a deeply conservative and religious background in a society where the mere mention of homosexuality is taboo, where his homosexuality caused (according to him) his mother's death, he is able to in effect separate and disentangle his emotions to the extent that Dr Perrin is able to describe the appellant as he has.
105. We accept Dr Perrin's diagnosis that the appellant is suffering from PTSD. His report is descriptive of the causes, symptoms and triggers for the appellant's presentation but sets out no analysis of the appellant's claim to be bisexual. There is no reference to difficulties he has had because of this, given his background. There is no reference to triggers or consequences for him psychologically. The report accepts uncritically the appellant's self description of being bisexual and, significantly we consider, fails to identify anything in this that may have resulted in or contributed to the appellant's current depressive or traumatic presentation; he concentrates on the appellant's mother's death, the violence from his father and his treatment in Feltham. There is no analysis of the relationships he had whilst in France and the effect this may or may not have had upon him.
106. Although we accept that the appellant's evidence was provided in a fragmentary way because of his depression, illness and problems with interpreters, we do not accept that the appellant was discovered by his parents as claimed; there are fundamental contradictions and inconsistencies in his account which cannot be explained by his age at the time or poor recall. He has added to his account as it has developed in order to bolster his claim to be gay.
107. We do not rule out the possibility that he may have had sexual experiences with someone of his own sex when younger but we do not accept that either of his parents was aware of this or if they were that it resulted in the extreme scene which he claims took place when the story in its final incarnation was that the appellant was lying on the bed in his shorts.
108. As for the appellant's description of his relationship with his parents, by significant and substantial contrast this evidence was clear, vivid and credible. We are satisfied that he was the victim of an abusive relationship with his father who was given to violence.
109. We do not accept the appellant's assertion that he could not establish gay relationships in Europe because he could not gain entry to gay clubs; on his own evidence he claims he has had one relationship whilst in the UK. He gave evidence of being able to establish a heterosexual relationship in the UK despite his limited English and despite the taboos within the Algerian community for heterosexual relationships outside marriage. He met Shardi in Croydon. Although he claims he

met Hassan in Croydon, he gave no description of the circumstances of that meeting or any difficulties they did or did not have. His disclosure of that relationship was very late in the day – during his oral evidence, despite having had experienced legal representation and he did not even mention it in the witness statement submitted that day. Our view is that his account of meeting Hassan is fabricated.

110. The appellant's account of his relationship with Karim to Dr Perrin indicated that he considered on reflection that he had been raped, yet there was no analysis by Dr Perrin of the extent to which that event contributed to his PTSD. There was no indication from the appellant that he sustained any anxiety or problems whilst in France. Although he claimed that he was able to explore his sexuality in France, he gave no detail of this save for very brief details of two relationships over an 18 month period. His claim that he considers he had been raped did not appear to have any effect on his behaviour or mental health. He did not describe any taunting or name calling whilst in Algeria. His account of him and Karim being together varied, with no explanation, between their meetings always being at Karim's home to include being at his home when his parents were out. He was evasive when asked questions as to how he and Karim managed to be alone at Karim's home when Karim came from a relatively large family. Overall we found his evidence with regard to his relationships to be vague, indeterminate and lacking in any adequate detail such as to indicate the nature and extent of the relationship.
111. Reaching a decision on someone's sexual identity and how that has been conducted is not an easy matter. But taking all of the evidence in the round we accept that although he may have had some same-sex experiences when in Algeria, the fundamental expression of his sexual identity is as a heterosexual individual. Any same sex element was no more than an early exploration that did not lead to any character identification or formation and is of no continuing or lasting importance to him.
112. Applying our findings we are satisfied that the appellant is not at risk of being persecuted or persecuted for a Convention reason in Algeria. Even if he were gay or bisexual (which we are satisfied he is not) he would not, on the basis of our conclusions with regard to the potential serious harm sustained by those who are gay or perceived to be gay in Algeria, be at risk of being persecuted.
113. We have found that the appellant's mother is deceased and that he had an abusive paternal relationship. We have considered the issue of tracing and *KA*. In the light of the statement by Ms Chapman set out in paragraph 3 above, we have not addressed this issue and heard no further submissions thereon.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

We set aside the decision.

We re-make the decision in the appeal by dismissing it on refugee grounds.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

We continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Judge of the Upper Tribunal Coker

Date

Schedule of documentary background material

In reaching our decision we have taken the following into account:

- I. Expert report of Alison Pargeter 13 June 2011
- II. Ksari.com 'Yizi-Ouzou: the Imam of the mosque El-Atik placed in custody' 2 March 2010
- III. LGBT Asylum News 'Algeria: 2-year jail sentence for gay imam' 13 April 2010
- IV. Country expert report of Dan Littauer
- V. Letter from Randa Lamri undated
- VI. UNHCR Refugee certificate of Al Omary, Imad Hussein
- VII. Changing attitude "Beirut, an imperfect haven for LGBT Refugees" 17 November 2011
- VIII. Letter from Ludovic Mohammed Zahed 14 May 2012
- IX. Witness statement of Ludovic Mohammed Zahed 23 August 2012
- X. Calem - International Network of Inclusive Muslim "Islam and inclusivity" undated
- XI. Calem "Interview France 24 - Ludovic Lotif Mohamed Zahed 2 April 2011
- XII. Email from Adams Wahid Gay Middle East in French dated 15 May 2012 with translation
- XIII. Printout from Alouen.org dated 23 May 2012
- XIV. American Psychological Association - Sexual orientation and homosexuality - 25 May 2012
- XV. COIS Report Algeria 3 November 2011
- XVI. Discover Algeria article undated
- XVII. SDGLN.com article 2 February 2011
- XVIII. In Brief article undated
- XIX. Gay men in Africa document undated
- XX. CNN - Algerian transsexual's memoirs 9 July 2010
- XXI. US Department of State Country Reports on Human Rights Practices for 2011
- XXII. Asylumlaw.org article 19 July, year unknown
- XXIII. In North Africa Gays Light a candle for visibility 10 October 2011
- XXIV. Extract for the UKBA Appeal and Litigation training team: Stonewall and UGLGIG quotes undated