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Heard at Field House
Date: 23 January 2004

APPEAL NO: CC002432003
ZS (IFA-Women) Algeria CG
[2003] UKIAT 00211

IMMIGRATION APPEAL TRIBUNAL

notified: Date Determination
.....13/02/2004...
.....

Before
:

Mr N H Goldstein (Chairman)
Mr N Kumar JP
Mr F T Jamieson

Between

APPELLANT

And

Secretary of State for the Home Department

RESPONDENT

Appearances:

For the appellant: Ms A Sheehan, Counsel
For the respondent: Miss C Hanrahan, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Algeria, has been granted permission to appeal to the Tribunal against the determination of an Adjudicator (Mr C G Blake) who dismissed her appeal on asylum and human rights grounds.
2. The appellant's evidence was well summarised by the Adjudicator within paragraphs 4 to 8 of his determination and

at paragraph 10 the Adjudicator concluded that having heard and seen the appellant he found her to be a witness in truth and accepted all that she said and further noted that the Secretary of State in his refusal letter had not seriously challenged her account of events.

3. The Adjudicator nonetheless concluded that the adverse acts against her by the authorities and the Police Officer Djemal (about whose behaviour the appellant had sought to complain to the police only to find that Djemal was a senior police officer at that station) were, as described by the Adjudicator:

"... far more likely to have been an abuse of their authority for private reasons of his own than any concerted campaign against her Refugee Convention reasons. He had been harassing her and pestering her for sexual favours which she refused to offer him. I do not find that the treatment he received was motivated by a desire to discriminate against her on grounds of her ethnicity. I also note that she was a civil servant. She faced some discrimination because of her Berber ethnicity but this did not amount to persecution. Her account of events relating to the blow she received to her head and ear is supported by the short medical report provided by St Mary's Hospital."

4. The Adjudicator then proceeded to consider whether or not there was any future risk to the appellant were she to be returned to Algeria and in so doing he made it clear he had taken full account of everything Ms Sheehan (who also appeared before the Adjudicator on the appellant's behalf) had told him and her skeleton argument. The Adjudicator continued inter alia:

"Having accepted the appellant's account of events I have to ask myself how she would be likely to be treated if returned to Algeria. It is clear that she has no connection with any terrorist groupings and no action was taken against her in this regard. I do not accept that there is any evidence that being a Berber is enough to hold a well-founded fear of persecution. I accept the reasoning of the respondent in this regard at paragraphs 6 to 12 of the refusal letter".

We pause there to point out most fairly Ms Sheehan clarified to us that it was not part of her submissions to the Tribunal that the Adjudicator erred in terms of his findings in relation to the appellant's ethnicity.

5. The Adjudicator continued at paragraph 11 of his determination inter alia as follows:

"I find that if she were again faced with such adverse and hostile acts by the police she could complain to a higher authority and her complaint would be taken seriously. The fact that such complaints are received and acted upon even in the desperate general state of Algeria today is apparent from paragraphs 6.16 to 6.20 of the CIP Report... I have found that hostile acts upon her by the police were for personal reasons not for her actual or imputed political opinion. I see nothing in her evidence or in the objective material to enable me to say that matters would be different if she were returned to Algeria today".

6. In this regard we noted the relevant passages of the April 2003 CIPU Report to which the Adjudicator referred which demonstrates that police disciplinary action is taken against soldiers or policemen who are guilty of human rights abuses and that some disciplinary action was indeed taken during the year ending 2002. Some officers have been brought to trial and disciplined for their actions in Kabylie. Although the government did not routinely release details of such cases in 2000, government officials reported that between three hundred and fifty and four hundred officials had been punished for human rights abuses.
7. Further, the Algerian Ministry of Justice kept diverse international human rights organisations informed of criminal prosecutions against members of security services and Groupes d'Autodefense on the grounds of human rights violations since 1992 without however providing detailed information.
8. In July 2001 the head of the security forces told a national newspaper that changes were needed to improve training and culture and that the security forces frequently abuse the law which was attributed to a lack of education and culture in the force and to recruitment without respecting criteria and conditions. This had led to the dismissal of over seventeen hundred policemen in 1997 of which two hundred and eighty were tried. In September 2002 the head of the Gendarmerie also announced a reorganisation policy including a purge of those implicated in abuse during the Kabyle riots in 2001.
9. Since 2000 judges had to include in their judgment the behaviour of Police and Judiciarie the officers who interrogate suspects when they are first arrested towards the suspect in custody. Further, at the end of the custody period, a medical examination of the suspect has to be carried out. The public prosecutors occasionally inspect the detention centres where suspects are held.

10. Human rights awareness has become an integral part of the training of police and gendarme officers in recent years. It is usually given in co-operation with foreign - usually French - police. The ICRC has assisted in the instruction of International Humanitarian Law for the country's armed and security forces.
11. We took the trouble to check the sourcing of this material and noted, as we drew to Ms Sheehan's attention, that the background material to which we have above referred was mainly sourced from a US State Department Report released in March 2003 and a general Country report on Algeria released in December 2002 by the Netherlands Department for Immigration Affairs.
12. In our view, in the light of the objective material to which we have referred and the Appellant's particular circumstances we find that the Adjudicator rightly concluded that there was a sufficiency of protection available to her in Algeria and that insofar as the conduct of the police officer Djemal was concerned the appellant upon return to Algeria, and if regrettably faced with further hostility from him, could complain to a higher authority where her complaint would indeed be taken seriously.
13. Although not specifically raised in the grounds of appeal, Ms Sheehan submitted that given that much of Algeria was desert and relatively uninhabitable it would be unduly harsh for the appellant as "a lone woman" to seek to relocate elsewhere in Algeria, such as along the northern coastline, to be safe from any further attempt on the part of Djemal to further pursue her.
14. We were not persuaded by this submission. Our starting point is the Adjudicator's finding that notwithstanding that he accepted the credibility of the appellant's account, she had failed to establish a well-founded fear of persecution for a Refugee Convention reason. A sufficiency of protection was available to her in Algeria.
15. A person who for whatever reason has protection in his or her own country has no basis for a fear of persecution and there is no basis for imposing international duties of surrogate protection in respect of a person who has adequate protection in his or her own country. It is only if his or her own country fails her that the surrogate protection of the international community is engaged in the medium of the Convention. Thus arises the notion of internal flight.
16. We remind ourselves that the Adjudicator rightly concluded on the evidence before him that the appellant had

failed to establish a well-founded fear in that it was open to her in her particular circumstances to complain about the behaviour of this senior officer to a higher authority who would provide her with protection as was evident from the objective material to which the Adjudicator referred.

17. Ms Sheehan had referred us to the CIPU Country Assessment of October 2003 (which we pointed out was not before the Adjudicator) where at paragraph 6.152 there is reference to the fact that "a single woman living in Algeria can make her own living without the aid of her family provided she could find a job". As we reminded Ms Sheehan, this is an appellant who is an educated intelligent young lady. She is a librarian, an archivist and who as a "lone woman" would have significantly less difficulty in finding employment upon return.
18. We further observed that as a "lone woman", the appellant had previously no difficulty in the course of her employ in a Government Ministry as an archivist to take up employment one hundred and forty kilometres from her home. In this regard it follows that even if it had been incumbent on the Adjudicator to consider the issue of internal relocation this would represent a positive factor that could not be ignored.
19. We were informed by Ms Sheehan that the appellant's husband's appeal against the earlier refusal of asylum had yet to be heard. In this regard the Adjudicator had rightly concluded at paragraph 12 of his determination that it was "inconceivable that the appellant would be removed whilst her husband's appeal was proceeding. Ms Hanrahan reinforced such a conclusion for the respondent who provided us with an unequivocal confirmation that the appellant would not be removed to Algeria whilst her husband's appeal was pending. They would be removed together in the event that the appellant's husband's appeal was unsuccessful.
20. It follows that the appellant would not in any circumstances be returning to Algeria as a "lone woman" and it was noteworthy that Ms Sheehan (though reminding us that we knew nothing of the appellant's husband's circumstances) realistically accepted that her argument was based upon the appellant going back to Algeria alone. To that extent, Ms Sheehan accepted that her submissions were largely predicated on matters that in the event would subsequently prove to be academic.
21. Ms Sheehan nonetheless maintained that upon return the appellant would be at risk. She speculated that due to the machinations of Djemal, (because of a previous allegation made against the Appellant to the effect that she was involved with an alleged terrorist, Assouli, who happened to work in the

same building); the Appellant might be at continued risk of arrest and detention at some stage if returned.

22. However, as the grounds recognise, the Adjudicator accepted that the appellant was required to attend the police station to answer questions about her association with him and later re-attended the police station. Further, her room at the University was searched. Approximately eight months later, the Appellant was summonsed to attend a local tribunal where she was told that the police had a warrant to search her home because of her terrorists links, a search later carried out.
23. Ms Sheehan submitted that therefore there "might" be some form of record of that police enquiry and that upon return the Appellant could be charged with terrorist offences which would give rise to a real risk of persecution.
24. We are not persuaded by that submission. There is no evidence that such a record had been kept and as the Adjudicator noted the interest of the police took place during the period June to December 2001. Further, it was in February 2002 that the appellant received the summons to attend a local tribunal in the town where she worked where she learned that the police had a warrant to search her family home because of suspicion of terrorist links. The appellant described a superficial search which took place after which the police left and it is noteworthy that she then continued to work to support her family and that despite Djemal's continued harassment of her she did not leave her employ until August 2002.
25. Interestingly the Appellant married her husband in September 2002 and they decided to leave Algeria together in that month. As the Adjudicator rightly observed and indeed as further submitted to us by Ms Hanrahan for the respondent, it is apparent that the Appellant had no connection with any terrorist group and was not found to have such connection. No further action was taken against her in this regard.
26. There is no evidence of any continuing interest in the Appellant since she left Algeria in 2002. It is not suggested that charges had been laid in connection with such earlier suspected terrorist links and the submission on the part of Ms Sheehan that such allegations might be resurrected upon her return are speculative.
27. We have concluded notwithstanding Ms Sheehan's eloquent submissions on the Appellant's behalf, that the Adjudicator conducted the appeal in a very careful and competent way and reached findings that were properly open

to him on the evidence. There is no proper basis on which the Tribunal should reverse or set aside those findings.

28. It follows that the appeal must be dismissed.

N H Goldstein
Vice President