JH

Heard at Field House

On 10 October 2002

SE (Objective Evidence) Algeria CG [2002] UKIAT 05176

CC 45213-2001

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.....11/11/2002.....

Before:

Mr G Warr (Chairman)
Mr N Kumar, JP
Mr A Smith

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

APPELLANT

and

Sofiane Ettaani

RESPONDENT

DETERMINATION AND REASONS

1. The Secretary of State appeals the determination of a Special Adjudicator (Mr W G Beckett) who allowed the appeal of Mr S Ettaani, a citizen of Algeria, for convenience hereinafter referred to as the appellant, against the decision of the Secretary of State to refuse his application for asylum.

2. Mr J McGirr appeared for the Secretary of State. Miss J Scally, of Counsel, instructed by Thornhill Ince, Solicitors, represented Mr Ettaani.

3. The appellant's family had a shop where they sold clothes in Algiers. On 5 June 1999 two men claiming they were from the GIA demanded money from the appellant. They had told them that the appellant's brother owed them some money. The appellant's brother had come to the United Kingdom in 1997 and had been granted asylum status in the UK on 13 November 1998.

4. The appellant went to the police to report the incident and the police told him that if he saw the persons again he should contact them.

5. The appellant telephoned his brother in the UK who denied there was any money owing. On 21 July 1999 the men returned to inform the appellant that they intended to collect money from him every month. The appellant's brother advised the appellant that he should leave straight away. He had had similar problems with the GIA. The appellant told the Adjudicator that he had never been a member of any political party or held any particular political views and he had never been charged or experienced any problems with the authorities or any other groups in Algeria prior to June 1999.

6. The Adjudicator found the appellant to be a truthful and credible witness in the main although there were certain discrepancies in his account of the visits to his shop by the GIA. The appellant's account was not tested in cross-examination because there was no presenting officer at the hearing.

7. The Adjudicator was satisfied that the background information demonstrated that the GIA were an extremist Islamic group who attacked people who did not share their views particularly in order to obtain money from them. The Adjudicator accepted that the appellant would be treated by the GIA "as a member of the establishment, being a shop owner in Algeria and a person from whom they could obtain monies for their own purposes". The Adjudicator added:

> "Whilst the appellant himself was not on the evidence a member of any political party or hold any particular political views, nevertheless I accept that he was threatened on occasions by the GIA and I take the view that the appellant's subjective fear to his life if returned to Algeria is amply supported by the various reports which have been placed before me by the representatives of the appellant."

8. The Adjudicator noted that the appellant feared non-state agents and concluded that there was no protection available to him from the police. The Adjudicator acknowledged that there were problems for the police in view of the lack of information supplied to them regarding the individuals who had come to the appellant's shop. Nevertheless, the Adjudicator concluded that police effectiveness was minimal as the police were involved with the GIA in certain cases and also corrupt and unwilling to offer assistance.

9. In paragraph 14 of the determination the Adjudicator gives his reasons for concluding that the appellant's fear is well-founded, unfortunately misdirecting himself on the applicable standard of proof in the process:

> "On the evidence before me I take the view on the balance of probabilities that the visit of the GIA to the appellant's shop in order to extort money from him and to threaten him was connected with previous visit to his brother Ahmed, who had later escaped to the United Kingdom and obtained asylum."

10. In the grounds of appeal the Secretary of State argued that the appellant's problems were totally localised and the Adjudicator had failed to look at the question of internal relocation. There was a sufficiency of protection for the appellant in Algeria. The Adjudicator had failed to have regard to a Tribunal case which had been placed before him – Serrar (01/TH/1614). The Tribunal had found in that case that there was a sufficiency of protection for individuals against the activities of the GIA. The government had control of events in the towns and cities. Security in Algiers would have been adequate. The police had indicated by their actions that they were willing to assist the appellant. The Adjudicator had failed to identify the objective evidence relied upon. Mr McGirr submitted that the appellant was merely a victim of crime. The Adjudicator had not explained how he had reached his conclusion. The objective material before the Tribunal supplied by the appellant was the same as that before the Adjudicator.

11. Mr McGirr referred us to the Home Office Country Assessment and submitted that there was nothing in the material supplied by the appellant, in particular the report entitled "Algeria: A Country in Crisis" by George Joffee to support the Adjudicator's assertions about the conduct of the police. The Adjudicator's observations were merely an unsupported series of comments.

12. While there was no presenting officer at the hearing, the Home Office had lodged among other documents the Tribunal case of Serrah. It was quite apparent there was a sufficiency of protection and considerable changes in Algeria.

13. As an alternative, fallback position, Mr McGirr argued that the appellant would be able to relocate – an option not considered by the Adjudicator. There was minimal terrorist activity in urban areas. The GIA were organised in semi-autonomous units. One cell would not be aware of the activities of another cell – even assuming there was any risk at all from the GIA given the objective material.

14. Miss Scally relied on her skeleton argument. She submitted that the GIA would indeed regard the appellant as a member of the establishment. The appellant's brother had run the business from the same shop and had fled from Algeria and had obtained political asylum. The GIA would have adopted the same approach against the appellant. Not being with them, he would be against them. It did not follow that the Adjudicator had not considered the case of Serrah although it might have been helpful for him to mention it.

15. The Joffee report had been compiled in May 2000 but it was relatively current and was in a sense prophetic since it was envisaged that there would be an upsurge in violence. The apparent calm was illusory. The problem was not localised and not under control. There were bomb attacks in Algiers. The appellant was in an identical position to his brother and had been found to be largely credible. The Tribunal in Serrah had not referred to the Court of Appeal decision of Noune [2001] INLR526. Counsel accepted that the background in Noune was very different from the one in this case. She acknowledged that the extracts from Professor Seddon's report reproduced in the judgment did not mention shopkeepers as such – the Islamist groups tended to target, in addition to members of the state security forces "those identified as professionals, with a tendency to be secular and non-cooperative with the Islamist movement".

16. Counsel submitted that the appellant's shop was still in Algiers – the lease ran in families – and there were 11 members of the family living in the neighbourhood of the shop. The GIA were bloodthirsty and the appellant had been reasonable to leave. Relocation was not an option and the police could not maintain law and order.

17. Mr McGirr submitted that the Joffee report was two years old and of limited value. There was a disclaimer at the start of it and the Tribunal had criticised the report for not being fully sourced. The Home Office Country Information report should be preferred. Unrest was confined to the countryside.

18. At the conclusion of the submissions we reserved our determination. We are grateful to Counsel for her lucid and well—prepared skeleton argument. We take into account the documentation she relied on. We note that the Joffee report was prepared mainly on the basis of publicly available information and did not purport to be exhaustive. It was written in May 2000. It was the author's view that the current calm was merely a lull and the armed Islamist movements were as active as ever. The security forces had not been successful in containing them. At page 16 of the appellant's bundle there is the following extract:

> "This means, inevitably, that the security forces will have to continue their operations, for the GIA and GSDJ will not be eliminated from the very rugged countryside that they occupy, nor will their support networks be removed from the towns."

19. Counsel places reliance on the fact that the appellant may still be at risk from such support networks. We note under the heading "The Potential Victims" on page 15 of the report that the GIA targeted security personnel, civil servants, intellectuals and foreigners. The report continues:

> "Its militants and sympathisers, particularly in urban areas, have also enforced behaviour in accordance with Islamist codes and

> practises so that persons engaged in activities, such as theatre, television or the amusement industry generally continue to be under threat, as do women who do not observe Islamic dress codes. Only in areas where the security forces have established a massive presence, as, in central Algiers and other major towns, is this not the case."

20. It is perhaps also worth referring to the following extract:

> "In addition, despite official claims that security in urban areas has been re-established, these are not fully supported by the evidence. Local emirs, claiming to be part of the GIA, still run protection rackets in urban areas, particularly in the poorer Medina and new Medina areas – even in the Medina-Casbah in Algiers, which used to be a GIA hotbed, calm is only maintained by a constant and heavy security force presence – the police are notoriously corrupt, engaged in smuggling and extortion rackets (120 policemen are currently facing charges of extortion and murder); and in the countryside, as mentioned above, there are still 400,000 armed militias who are controlled by communal authorities."

21. At the conclusion of this section there is reference to a French Ministry report in February 1998 which states that the Algerian government had failed in its duty to protect its own citizens – the paragraph continues "the situation has not radically improved since then except in central urban areas".

22. Counsel submitted that the Tribunal in Serrah had not had the benefit of the decision of Noune and accordingly might have unwittingly erred. We are not satisfied that that is so. However, for the purposes of this appeal, we remind ourselves of the opinion of Lord Hope in Horvath v Secretary of State [2001] 1AC489 at 500:

> "But the application of the surrogacy principle rests upon assumption that, just as the substitute cannot achieve complete protection against isolated and random attacks, so also complete protection against such attacks is not to be expected of the home state. The standard to be applied is therefore not that which would eliminate all risk and would thus amount to a guarantee of protection in the home state. Rather it is a practical standard, which takes proper account of the duty which the state owes to all its own nationals."

23. Lord Hope observed that "certain levels of ill-treatment may still occur even if steps to prevent this are taken by the state to which we look for our protection".

24. The Home Office Country Assessment notes at paragraph 5.A.6 that there had been a shift in the past few years in the pattern and intensity of the violence:

> "The overall security situation has improved as the security forces have largely brought the security situation under control and forced the insurgents out of the main cities into the countryside."

25. Paragraph 5.A.8 states that:

> "The Algerian authorities are in control of the vast majority of their territory. As most people live in towns, many having voluntarily relocated for personal security reasons, the present violence is not a major feature of most people's day-to-day lives."

Later in the bulletin, under the heading of "Armed Groups", it is stated that: "It is essentially rural terrorism that is taking place except in the strongholds of the armed groups". It is said that "Armed groups also threaten individuals (such as shopkeepers and entrepreneurs) in dangerous regions".

26. Towards the end of the appellant's bundle there are some news items referring to attacks and explosions. For example, on 23 April 2002 a bomb exploded in a pedestrian subway in the Belcourt district. This word is underlined in manuscript (presumably by the appellant) and it is stated that that is the area where he resided. It is said that bomb attacks or guerrilla raids in Algiers and its near suburbs began again last August after a period of calm that lasted almost two years. The press reports blamed the GIA for the attacks. The other reports speak of attacks at some remove from the capital.

27. We emphasise that we reach our decision in the light of the totality of the material before us, not merely the passages we have highlighted above. We do, however, feel that Mr McGirr is entitled to submit that the situation is indeed as claimed in the assessment, that the GIA's activities are in the main confined to rural areas. Of course there have been and will continue to be outrages. We are conscious of the fact that the authorities may put a brave face on matters and may wish to play down terrorist activity. Nevertheless, we find that the GIA does not pose the threat that it may once have done in urban areas.

28. We have to say that we are not overly impressed with the Adjudicator's determination. We recognise that he did not have the assistance of a Presenting Officer. We do not accept that the appellant has established to the required standard that he would have been viewed or would be viewed as a member of the establishment. The evidence in our view is simply of criminal racketeering. We do not accept that the people who came to the appellant to demand money were

interested in anything other than the money. They were not in the slightest bit interested in the appellant's views nor did they attribute views to him. We note, incidentally, that according to the Joffee report the individuals may not have been from the GIA at all – merely emissaries of local protection rackets. In making our findings we recognise that the appellant's brother was granted refugee status but, dealing with the appellant before us, we do not believe that the circumstances of his case entitle him to similar status. We also note that the appellant turned to the police who did not send him away but requested the appellant to inform them if he saw them again. It is not recorded in the determination whether he did so.

29. On the material before us we are not satisfied that the appellant can establish to the required standard that he has a well-founded fear of persecution at the hands of the GIA in Algiers, his home area, if returned there today. We do not believe that there is a reasonable degree of likelihood of support networks of the GIA having an interest in the appellant. There can be no guarantee of safety but it is not established that there is a real risk.

30. We also agree that the appellant's problems were localised in nature. If we had been satisfied that the appellant had established that he had a fear of the GIA in his home area (and we emphasise that we are not so satisfied), we would not have regarded it as unreasonable for him to relocate. The Adjudicator did not explore this issue at all.

31. In summary, we find that the appellant can properly be returned to his home area without fear of persecution in the light of the objective material before us. In the alternative, it would not be unduly harsh for him to move elsewhere.

32. For the reasons we have given, we reverse the Adjudicator's determination and allow the appeal of the Secretary of State.

Mr G Warr
Chairman