



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number:

AA/05431/2014

AA/05432/2014

AA/05433/2014

AA/05434/2014

AA/05435/2014

AA/05436/2014

THE IMMIGRATION ACTS

Heard at Newport

On 31 March 2016

Determination

Promulgated

On 15 April 2016

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

MB

ME

OB

AB

DB

AB

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Dieu, instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the Appellants. This direction applies to both the appellants and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellants are a family of Libyan nationals comprising a husband and wife (the first and second appellants) and their four children aged at the date of the First-tier hearing 17, 7, 15 and 16 years of age respectively. The first and second appellants also have another daughter, aged 19 years of age, whose claim for asylum and international protection is the subject of a separate appeal (AA/07751/2015) which, as a result of an error of law decision made by the Upper Tribunal on 16 March 2016, awaits a resumed hearing before the Upper Tribunal to remake the decision in respect of her. In the light of the decision I make in these appeals, the appeals of the whole family should continue linked together in the Upper Tribunal.
3. The appellant's come from Benghazi in Libya. The first appellant completed a PhD at Swansea University between 2008 and 2013. Thereafter, on 30 October 2013 he returned to Libya.
4. As a result of the security situation in Libya, the first appellant together with the other appellants came to the UK via Turkey in June 2014 and claimed asylum. On 13 July 2014, the Secretary of State rejected each of the appellants' claims for asylum, humanitarian protection and reliance on their human rights, in particular Article 8 of the ECHR. On 15 July 2014, the Secretary of State refused to vary the leave of each of the appellants (which they had as visitors) and made decisions to remove them under s.47 of the Immigration, Asylum and Nationality Act 2006 to Libya.

The Appeals to the First-tier Tribunal

5. The appellants appealed to the First-tier Tribunal. In a determination promulgated on 30 January 2015, Judge Britton dismissed each of their appeals on asylum, humanitarian protection and human rights grounds.
6. First, the Judge rejected the appellants' claims to asylum based upon the first appellant's account that he had been targeted whilst working in his office when someone (whom he did not know) shot a single bullet into the office. The Judge found the appellant's account of persecution to lack credibility and be a fabrication.
7. Secondly, in relation to humanitarian protection and Article 15(c) of the Qualification Directive (Council Directive 2004/83/EC) the Judge held, applying the country guidance decision in AT and Others (Article 15(c); Risk Categories) Libya CG [2014] UKUT 00318 (IAC), that the security

situation in Libya was not such as to establish for any of the appellants substantial grounds to believe that they were at risk of serious harm as a consequence of indiscriminate violence. In reaching that decision, Judge Britton concluded that the background material relating to Libya since AT and Others was decided did not justify a departure from that decision.

8. Thirdly, the Judge found that it was in the best interests of each child appellant to be with their parent and to return with them as a family to Libya. The Judge found that the appellants' removal would not breach Article 8.
9. Thus, he dismissed the appeal on all grounds.

The Appeals to the Upper Tribunal

10. The appellants sought permission to appeal to the Upper Tribunal against the Judge's dismissal of the appeal on asylum grounds, under Article 15(c) and under Article 8 of the ECHR. On 20 February 2015, the First-tier Tribunal (Judge Kamara) granted the appellants permission to appeal on all grounds.
11. On 19 March 2015, the Secretary of State filed a rule 24 response seeking to sustain the Judge's decision.
12. Thus, the appeal came before me.

Discussion

13. Mr Dieu, who represented the appellants, sought to challenge the Judge's dismissal of the appeal on asylum grounds, for humanitarian protection and under Article 8 of the ECHR.
14. In summary his submissions were as follows.
15. First, in relation to the rejection of the asylum claim, Mr Dieu submitted that the Judge's reasons at paragraph 50 and 51 of his determination for disbelieving the appellants' claim were inadequate.
16. Secondly, as regards Article 15(c) Mr Dieu submitted that the Judge had failed properly to take into account two expert reports by Dr George dated 27 September 2014 and 19 January 2015 in reaching his decision that the present circumstances in Libya did not justify departure from AT and Others. Further, Mr Dieu submitted that the Judge had not properly taken into account the news report that he had cited at paras 44 and 46 by merely recognising that a cease fire had been agreed in Libya in early January 2015. Finally, in relation to Article 15(c), Mr Dieu submitted that the Judge had failed to take into account the circumstances of the other appellants, in particular that the second appellant had a heart problem and, therefore, he submitted her ability to avoid or evade indiscriminate violence was decreased and, in relation to the fourth appellant, the judge

had failed to take into account the evidence from his school that he suffered from nightmares.

17. Thirdly, in relation to Article 8 Mr Dieu submitted that the Judge had failed to take into account, in assessing the best interests of the children, that they had been in the UK for five years and had not placed that in the balance when considering proportionality.
18. Mr Richards, on behalf of the Secretary of State, first submitted that the Judge's reasons in paragraphs 50 and 51 were sufficient to sustain his adverse credibility findings on the asylum claim.
19. Secondly, in relation to Article 15(c), Mr Richards submitted that whilst the Judge did not perhaps delve deeply into the evidence, he referred to Dr George's report at paras 47 and 48. Mr Richards submitted that Dr George's report was by no means conclusive in the appellant's favour and, although at para 67 (page 23 of the bundle) Dr George identified that whilst the first appellant would be at risk from intermittent violence, his view was that the risk would not be "high". He submitted that Dr George's second report placed the risk to the first appellant travelling to Libya as presently no greater than that confronting any other air traveller. Mr Richards submitted that there was nothing in the evidence to lead the Judge to reach a different conclusion from AT and Others.
20. In respect of the position of the second appellant, Mr Richards submitted that there was some medical evidence but nothing in the way of an expert report showing or identifying any adverse effects to the second appellant returning to Libya as a result of her heart condition such that the risk to her under Article 15(c) was greater. Likewise, there was little information in relation to the fourth appellant apart from a letter from his school.
21. Finally, Mr Richards submitted that the Judge had taken account of the children's best interests as a primary consideration and there was nothing wrong in his conclusion that their best interests were to return as a family.

Discussion

22. I deal first with the asylum claim.
23. The first appellant's claim is set out essentially at paragraphs 7 and 8 of the Judge's determination. The first appellant's claim was that in April/May 2014 whilst he was in his office a single shot was fired into the office. He did not know if it was directed at him and the first appellant's evidence was that it may have been random. There was no-one else in the office at the time. The first appellant's evidence was that apart from that there had been no direct threats to him personally or his family. The remainder of matters raised by the first appellant concerned the general security situation and violence in Libya, in particular in Benghazi where the family lived.

24. The Judge did not accept the appellant's account that he had been targeted. At paras 50-51 he gave the following reasons:

"51. The appellant had studied in this country and then returned to Libya in 2013. He started working in his own business and also at the university although he had not formally been appointed. After a relatively short time he came back to this country. I am not satisfied that the appellant was targeted. The situation was not deteriorating to the extent that he did not wait for his daughter to have a visa because she remained in Libya with her grandmother for another two months. I find the area of Benghazi was safe because he would not have left his parents and his daughter there. He would have made sure they were safe before he left Benghazi.

52. The appellant said he did not claim asylum in Turkey because the children did not like it as they could speak the language. If the appellant was in need of international protection he would have claimed asylum in the first safe country. He went to Turkey as he did not need a visa to enter Turkey. I find it a feeble excuse that the children did not like it in Turkey because they did not speak the language when he said he was fleeing persecution. Likewise the excuse for not going to Tunisia to claim asylum was because they spoke French in the schools. The appellant did not need a visa to enter Tunisia. In Tunisia Arabic is the official language and it would have been an obvious country for him and his family to have gone. I find if he was in need of international protection he would have claimed asylum at the first opportunity. However, I find he came to this country because he has been to this country and enjoyed living here and wanted an excuse to live here permanently. Also he failed to go to Tripoli where his brother was living although the appellant said his brother had gone back to Benghazi. Because there are no direct flights to Libya it does not mean to say that the appellant cannot go back to Libya because he can return the same way that he came here via Turkey. I find the appellant is not at risk on return."

25. Whatever the strength of these reasons, which I am not persuaded were inadequate to justify the Judge's finding, the fact of the matter is that the first appellant's own evidence even if believed could not establish that he was targeted and therefore would be at risk of being targeted by unknown individuals on return. His own evidence was that this was a single shot, he did not know who fired it and that it might well have been random.

26. The first appellant's asylum claim (and those of his family as his dependents) had no realistic prospect of success on this evidence. Even, therefore, if I accepted Mr Dieu's submissions that the Judge's reasoning was inadequate there would be no proper basis for setting aside the decision on asylum grounds since the appellants could not, in my judgement, have any realistic prospect of a positive outcome.

27. I turn then to the central part of the appellants' claims, namely Article 15(c).

28. The position before the Judge was that the country guidance case of AT and Others was adverse to the appellants' claims. That decision which

dealt with the position in Libya until November 2013 (no more recent material are recorded in the appendix) concluded that:

“There is not such a high risk of indiscriminate violence in Libya, within the meaning of Article 15(c) of Council Directive 2014/83/EC (“the Qualification Directive”) so as to mean that substantial grounds exist for believing that any person would, solely by being present there, face a real risk that threatens his or her life or person.”

29. The appellants sought to displace that conclusion by reference to more recent background evidence and the expert reports of Dr George.

30. Dr George is a recognised expert in relation to countries such as Libya and, indeed, his evidence was before the Tribunal in AT and Others. Dr George, in his first report dated 27 September 2014 summarised his view of the security situation especially in Benghazi at para 67 of his report as follows:

“I would observe that the security situation – especially in Benghazi, but elsewhere too – has deteriorated severely in recent weeks. In this regard I refer to my Report above, and in particular to Paragraphs 37-46, 51 and 60. Persons uninvolved in the fighting have been killed, but apparently not in very great numbers in relation to the size of the towns and cities involved. In my opinion, (the first appellant) would be at risk from the intermittent violence, although in my view this risk would not be high.”
(my emphasis)

31. Dr George reaches that conclusion by reference back to earlier parts of his report.

32. In Dr George’s second report dated 19 January 2015, he noted at paragraph 2 that in his original report he had outlined

“the sharp deterioration of the security situation in Libya during 2014. The fundamental situation remains much as it was at the date of that Report, with the country locked in a complex civil war with multiple fronts, with periodic surges of intense but mainly localised armed conflict.”

33. At paragraph 6, Dr George notes the ceasefire announced on 16 January 2015 by Libya Dawn but also notes that they added “that this would be maintained only if its antagonists also respected the truce”. A ceasefire was announced by the army on 18 January 2015.

34. In his determination, Judge Britton dealt briefly with Dr George’s report at paragraphs 47 and 48 in the following terms:

“47. The appellant relies on two papers enclosed in his bundle from Dr Alan George who has extensive knowledge of Libya and the Arab surrounding area. He now works on his own account as a journalist consultant and researcher. The papers are dated 27 September 2014 and 19 January 2015.

48. Dr George states that the Libyan airports, local and international flights are being operated to and from Tripoli, Benghazi, Misrata and Tubruk. Dr George sets out the problems Libya has faced in recent years.”

35. With respect, that does little to summarise the detail of Dr George's report, in particular the earlier one.

36. In relation to the news items, the Judge dealt with those in paragraphs 44-46 as follows:

"44. A document was submitted from the New York Times dated 19 January 2015 and Reuter's report of 20 January 2015 states there is a ceasefire in Libya and UN backed negotiations were taking place.

45. During the hearing there was a dispute between the appellant and the respondent as to whether the University of Benghazi was still open. The document at E1 stated Benghazi University reopened on 2 August 2014. I told the parties in the circumstances I would make my own enquiries. However, I could find no conclusive evidence one way or the other.

46. The BBC News Africa dated 20 January 2014 stated that the Libyan army has agreed a partial ceasefire with militias, 2 days after some of the militias based in Western Libya announced a unilateral truce. The UN Mission to Libya welcomed the announcement calling it a "Significant Contribution" to the country's peace process. It stated it would co-ordinate with both sides "regarding tackling any breaches" and that the truce would allow the flow of humanitarian aid to those who fled the fighting."

37. Then at paragraph 49 Judge Britton notes:

"The latest news is that the ceasefire is generally holding in Libya."

38. The reports are, of course, news items and are contained in a bundle (I was told prepared by the respondent) before the First-tier Tribunal.

39. It is far from clear to me that this material would necessarily lead to a departure from AT and Others on the basis that there were "very strong grounds supported by cogent evidence" to do so (see SG (Iraq) v SSHD [2012] EWCA Civ 940 at [47]). However, the evidence is relevant and it is clear to me that the Judge has failed sufficiently to take into account Dr George's report as a whole and, in relation to the news items, appears to have extracted little more than a "ceasefire" was in place in early January 2015. As regards the latter, the Judge makes no reference to the evidence which pointed up, in effect, that it was early days and it was not clear whether the ceasefire would hold. Also, the New York Times article at page 2 notes:

"It is not clear whether the truce will control the fighters on the ground. For example, neither side's ceasefire pledge seemed to apply to Benghazi, the city where the bloodiest battles had taken place in recent months." (My emphasis)

40. That of course, is a reference to the appellants' home area.

41. In my judgement, in failing properly to consider Dr George's report and fully to consider the news items the Judge's finding in relation to Article

15(c) and whether he should depart from AT and Others is flawed and cannot stand.

42. In the light of that, it is unnecessary for me to say more than this about the additional points made by Mr Dieu in relation to the second appellant's health condition and the fact that the fourth appellant is said to suffer from nightmares. I would conclude, agreeing with Mr Richards' submissions, that whilst there is evidence that the second appellant has a heart condition there is no expert report that casts any light on the impact that would have upon her so as to heighten the risk of suffering indiscriminate violence under Article 15(c). Likewise, the evidence from the fourth appellant's school does not, in my view, reflect on any heightened risk either.
43. Nevertheless, for the reasons I have given, the Judge's decision to dismiss each of the appeals under Article 15(c) is flawed and must be remade.
44. Finally, I turn to the issue of the children's best interests and Article 8. The Judge's treatment of the children's best interest is limited to paragraph 53 of his determination where he said this:

"The 'best interest' of the children is a primary consideration in determining whether it was proportionate for them to be removed from this country (ZH (Tanzania) v SSHD [2011] UKSC 4). The children are citizens of Libya. The best interest for the children is to be with both parents. As both parents will be returned to Libya together, the children will be returned with them as a family."

45. Whilst there was limited material before the Judge, there was evidence relating to the children's time spent in the UK - over five years - and evidence in relation to the fourth appellant from his school concerning the impact upon him of events in Libya.
46. While I do not consider that this evidence is particularly strong, I am less than confident that the Judge has fully considered the appellants' Article 8 rights including (in relation to the child appellants) their best interests. The Judge's consideration of the children's best interests in paragraph 53 is brief as is his consideration of Article 8 in paragraph 56; namely that the appellants will be returning to Libya as a family. They have not lived in the country for 20 years and any interference with their private life is proportionate. I do not suggest that the appellants have a strong Article 8 claim but I am not satisfied that the Judge has adequately dealt with Article 8 even if ultimately those claims may not succeed.

Decision

47. For these reasons, the First-tier Tribunal's decision to dismiss each of the appellant's appeals on asylum grounds stands.
48. The First-tier Tribunal's decision to dismiss each of the appellant's appeals on humanitarian protection grounds (Article 15(c)) and under Article 8 of

the ECHR involved the making of a material error of law and those decisions cannot stand.

49. Those decisions are set aside and must be remade. In the circumstances, including the fact that the appeal of the first and second appellants' other daughter (AA/07751/2015) is pending before the Upper Tribunal, these appeals will be linked together with that appeal for a resumed hearing before the Upper Tribunal.

Signed

A Grubb
Judge of the Upper Tribunal

Date: