



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: PA/01392/2015

THE IMMIGRATION ACTS

Heard at Birmingham

**Decision &
Promulgated**

Reasons

On 10 May 2017

On 9 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

ALSF

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Respondent: Mr J Howard, Solicitor, Fountain Solicitors

For the Appellant: Mr A. McVeety, Senior Presenting Officer

DECISION AND REASONS

1. At the hearing on 30 January 2017 I had made an anonymity direction. That shall remain unless and until the Upper Tribunal or Court directs otherwise. There shall be no identification of the Appellant by reference to his names within these proceedings. This is

my decision following today's resumed hearing following that error of law hearing.

2. I had noted in my error of law decision that the Judge of the First-tier Tribunal had allowed the Appellant's appeal based on asylum grounds. The Appellant, a Libyan national, had claimed to be at a real risk if removed from there from the United Kingdom.
3. The Secretary of State's grounds of appeal had explained that the Judge was wrong to allow the appeal based on the Appellant's assertion that he was in fear of local militia who had killed his brother in a revenge attack and who he alleged had also shot him. The grounds stated that it was perplexing that despite the Appellant not coming within any of the risk categories in the Country Guidance case of **AT and Others (Article 15c: risk categories) CG** [2014] UKUT 318, the Judge nonetheless went on to conclude that internal relocation was not a possibility.
4. I had come to the following conclusions:

"Having considered the rival submissions, it is clear to me that the Judge did materially err in law. That was because he did not adequately reason why internal relocation was not a viable option for this Appellant. I reject Mr Sharif's submissions that because the Judge noted he had been provided with some 400 pages of background material that therefore he must have taken it into account. All that had been said at paragraph 28 was, "The Appellant has provided me with a bundle of documents comprising 406 pages and I have a bundle of documents from the Respondent all of which I have taken into account". What specifically was it about the background material that led the Judge to conclude that internal relocation was not possible? The gloss now being put on that by Mr Sharif is understandable, but the difficulty is that the Judge did not explain what he made of the background material.

I agree with Mr Duffy that when allowing or indeed when dismissing an appeal a Judge does not have to cite every piece of evidence, but it is necessary to give adequate reasons why a party has lost based on, for example, internal relocation. Indeed, more so when the Secretary of State had specifically explained in her decision letter why internal relocation was a viable option. The Judge had summarised the Secretary of State's position in respect of internal relocation at paragraph 30 of his decision.

The difficulty with the Judge's finding at paragraph 46 is that the Appellant did *not* come within any of the risk categories from the Country Guidance case of **AT and Others**. It was clear that internal relocation was not available for those within those risk categories. This Appellant was *not* within those risk categories and so he *did*

have to show internal relocation was not possible. In the circumstances, although one can see why the Judge was minded to allow the appeal because the Appellant had been shot at and because he found him to be credible on a more general basis, I conclude that there has been inadequate reasoning in respect of the internal relocation issue.

Although it was not necessary for the Judge to have referred to the decisions of the House of Lords in **Januzi and others v Secretary of State for the Home Department** [2006] UKHL 5, [2006] 2 AC 426 and in **Secretary of State for the Home Department v AH (Sudan) and others** [2007] UKHL 49, [2008] 1 AC 678 it was necessary for him to ask the right question. That being whether it was reasonable to expect the Appellant to relocate within Libya or whether it would be unduly harsh to expect him to do so. It is also noteworthy that this Appellant's appeal is not one which seems to rely on persecution or risk from the state.

In my judgment, the correct law was not applied and the reasoning of the Judge was inadequate. "

5. I had also made directions, including for the filing and service of bundles and skeleton argument in respect of the internal relocation issue. Unfortunately, the first skeleton argument on behalf of the Appellant did not address the correct issues. Mr Howard put that right by providing me with a supplemental skeleton argument this morning with an apology for the error which he said had occurred at his office.
6. Mr Howard also sought to raise an issue as to whether it was "Robinson" obvious that Article 8 ECHR was also an error of law and that I should consider the same today. Mr McVeety said I should reject that submission. I pointed out to Mr Howard that I had clearly and specifically dealt with the scope of today's hearing. It was restricted to the protection claim and then only in respect of the internal relocation issue. There was no appeal before me (or indeed previously) in respect of Article 8. I therefore ruled that there was no such basis for me to consider Article 8 at this resumed hearing.
7. Both parties said that they had discussed the matter and were agreed that they wished to proceed by way of submissions only and that no evidence was to be called.
8. Mr Howard said he relied on his supplemental skeleton argument. He had set out the factual matrix from the First-tier Tribunal which included that:
 - (1) the Appellant had been shot when in Libya;
 - (2) it was not speculative to assume the assailants were from a militia;

(3) The Appellant's brother had been involved in the death of an important member of the rebel militia. The Appellant was called by name.

9. It was said that although the Appellant does not fit into any of the specified categories in the Country Guidance case of **AT** the judge of the First-tier Tribunal had been satisfied that the Appellant would be a target for the rebel militia as a result of his brother's involvement in the death of a prominent militia member.
10. Mr Howard relied on an expert report which had been prepared for this resumed hearing. The report was by Professor Joffie. Mr McVeety interrupted to say that there was no issue about Professor Joffie's credentials.
11. Mr Howard referred in particular to paragraph 126 where the expert had said that in recent months the situation in Libya had significantly worsened, particularly in western Libya. Paragraph 130 onwards then also dealt with the problems in other parts of Libya. There was specific reference to the Appellant and the risk to him at paragraphs 140 and 141. It was said that "in short" there was a real possibility that the Appellant would not have safe access to Libya given the current security situation if he was returned. In addition, it was said that there was a real possibility that the Appellant would not be able to ensure his own safety once admitted to Libya.
12. At paragraph 141 the expert report stated that, "Relocation is simply not a viable option in current circumstances and a large part of the country is now a closed zone. In fact [the Appellant] would face enormous problems in terms of relocation elsewhere in the country. "The expert explained why this was so, including because of travel bans and insecurity of internal travel and because there was no (functioning) authority which could provide the Appellant with protection.
13. Mr Howard relied on the Home Office Country Policy and Information Note for Libya dated 30 January 2017. The section on internal relocation was at paragraph 2.4. Section 3.1.5 showed that even though it was said that there the general security situation was not such that a person by simply being present in Libya would face indiscriminate violence to lead to a successful claim, there may be particular circumstances that do place such a person at risk.
14. In his submissions Mr McVeety said Libya was not in a good state of affairs. He said he was not saying Libya was "paradise" or that there was no violence and no issues. Mr McVeety said he also noted that the Appellant had been accepted to have been credible in his account and at risk in his home area. He said any brief reading of the COIS report showed that there was in-fighting in Libya and that

there were the names of many militia. It was a fragmented situation. He said though that the real issue was that no single militia had control of the country. The militia was there, but their reach was not beyond their area. The militia had attacked the Appellant in his home area. Paragraphs 141 to 143 of the expert report showed that this was inherent in the problem. In respect of the Article 15(c) the expert said he cannot make the argument in respect of this aspect. Mr McVeety referred to the statistics and the number of deaths which had occurred.

15. Mr Mcveety said that his point was that there are other areas where the Appellant could live. The statistical analysis showed there could be a move. For example, there were more killed in Paris in respect of the Charlie Hebdo issue. More than one death is a tragedy but it does not mean Article 15(c) is engaged. It was accepted that there was a relationship with a British citizen but that did not add anything to this part of the argument.
16. After hearing from Mr Howard in reply I had then reserved my decision.
17. Having considered the rival arguments and considering the Home Office background material from January 2017 and the expert report of April 2017, it is clear that Libya is indeed a very dangerous place. Mr McVeety is right though that it is not possible for me to conclude that there is a sufficient basis to enable me to conclude that there is a risk "just" because a person happens to be present in Libya. Therefore, there is no sufficient basis to enable me to conclude that Article 15(c) is made out. That is despite the Country Guidance of **AT** being some three years old now. I am aware that there will be new Country Guidance for Libya.
18. Article 15(c) was not the basis of the Appellant's case though. His case is that he has been the victim of a deadly attack whereby he was shot and wounded. The militia know who he is. His brother has been killed. I have taken into account the Country of Information Note at paragraph 3.1.5 which makes clear that there may well be particular circumstances of some persons which place them at risk.
19. I then factor in the expert report. Mr McVeety's Professor Joffie's credentials are not in dispute. I see no reason how I can disagree with the concession on behalf of the Respondent. The expert report has to be afforded due weight in the task I have to undertake when applying anxious scrutiny to this protection claim. The expert made clear that he does not even consider it will be possible for the Appellant to somehow safely return to his original home area. The expert concludes that even if the Appellant did somehow make to his home area, he would then be at risk there. Further, the expert explains that travelling to new areas is fraught with risk too.

20. In view of the specific and clear expert evidence, particularly at paragraph 141, which is not challenged by any other contrasting evidence from the Respondent I accept that for the purposes of this case only that for travellers between areas in Libya face a closed zone. The large majority (some 70%) of persons live in two urban constellations in the East and West of the country. Travel and relocation outside of these areas is currently forbidden. I accept the evidence that no authority can provide sufficient protection against arbitrary arrest which takes place.
21. Set against that background and set against what the favourable findings were, I assess whether it would be unreasonable or unduly harsh for the Appellant to be expected to relocate within Libya. In my judgment, even if this Appellant could make it safely into Libya with his background, he will not be able to relocate within Libya without it being unduly harsh or unreasonable for him to do so. That is because of the clear and uncontroverted expert evidence which makes that plain.
22. I note that this position does not even take into account the Appellant's British family.
23. I therefore conclude that although the original decision which had allowed the Appellant's appeal (on Refugee grounds) had contained a material error of law, a remaking of the decision means that the Appellant's appeal in respect of this protection claim is made out. Specifically, he is at risk on return to Libya because of the particular circumstances of his case set as against the background material set out in the Home Office report and in the Appellant's expert report. This resumed hearing was on a narrow issue of whether internal relocation was a viable alternative. It is clear that in this particular case it is not.

Notice of Decision

The Appellant's protection claim is allowed pursuant to the Refugee Convention.

An anonymity direction is made.

Signed

Date: 11 May 2017

Deputy Upper Tribunal Judge Mahmood