



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

Appeal Number: PA/02274/2015

THE IMMIGRATION ACTS

Heard at Liverpool

On 27th September 2017

**Decision & Reasons
Promulgated**

On 28th September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

**[B A]
(ANONYMITY DIRECTION NOT MADE)**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Mr. S Tettey; Counsel instructed by Broudie Jackson & Canter
For the Respondent: Mr. J Harrison; Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision and reasons by First-tier Tribunal ("FtT") Judge Mathews promulgated on 4th January 2017 in which he dismissed an appeal against a decision made by the respondent on 20th October 2015, to refuse the appellant's claim for international protection.

2. It is common ground that the appellant is a national of Libya. The appellant's immigration history is set out at paragraphs [3] to [6] of the decision of the FtT Judge. At paragraph [12] of his decision, the Judge sets out a summary of the appellant's evidence. The Judge's findings and conclusions are to be found at paragraphs [13] to [41] of his decision. The Judge carefully considered the evidence before him as to the appellant's place of birth and the address at which he had lived prior to his departure from Libya. At paragraph [17] of his decision, the Judge found that on any account, the appellant had been able to live in Tripoli, that he studied in that area, and held employment in that area too. At paragraphs [18] to [28], the Judge considered the appellant's account of events in Libya, and the information that he has received about an arrest warrant issued against him by a militia because of his past activities as a guard. At paragraph [28] the Judge found the appellant's account to be lacking in credibility. He was not satisfied that any group has an interest in the appellant or his family and the Judge found that the appellant's position is no better or worse than life for many similar Libyan people. The Judge found, at [30], that the appellant has not discharged the burden of proving that he is at risk.
3. The Judge then turned to consider whether the appellant qualifies for humanitarian protection under Article 15(c) of the Qualification Directive. To that end, the Judge states, at [33];

"I do not accept that the evidence shows change in Libya, the airport in Tripoli has now been closed, amnesty reports do refer to risks to civilians from internal conflict that continues, the further reports also refer to similar fighting against Islamic militants though the casualties referred to by the Voice of America document are largely the protagonists of the fighting rather than civilian citizens."

4. At paragraphs [35] and [36], the Judge states:

"I note the extensive evidence of militia activity with that of other armed groups including Islamic extremists, but this appellant, as set

out above has not made out on the evidence before me any basis for an adverse interest in him by any of the groups he claims to fear, or indeed by any groups considered in the material before me.

I do not find that this appellant makes out his claim for protection on humanitarian grounds”

5. At paragraph [39] of his decision, the Judge found that the appellant is able to depart voluntarily to Libya. The Judge did not accept that the appellant “has made out an inability to travel through Libya such that he cannot return along the well-travelled coastal zone”.
6. The appellant advances two grounds of appeal. First, the FtT Judge failed to properly consider arguments advanced in relation to Article 15(c) and the route of return to Libya. The appellant contends that in accordance with the decision of the Court of Appeal in **HH (Somalia) [2010] EWCA Civ 426**, in a case in which it could be shown either directly or by implication what route and method of return was envisaged, the Tribunal is required to consider and determine any challenge to the safety of that route or method. The appellant accepts that inability to return by itself does not give rise to a protection claim, but submits that where the safety of that route or method is in issue as a result of instability in a country, it is incumbent on the Judge to deal with that matter.
7. Second, in reaching his credibility findings, the Judge failed to take into account factors weighing in favour of the appellant. The appellant submits that the Judge failed to consider photographs from Facebook, and that the other photographs that were referred to by the Judge, deserved more substantial and independent consideration by the Judge, as evidence that supports the appellant’s account. Furthermore, the Judge failed to consider objective material that described a very similar scenario to the facts of the appellant’s case, to inform the Judge as to the plausibility of the appellant’s account. Finally, the Judge erred as to

his assessment of whether the appellant assisted in guarding a building by referring to the appellant's student visa application in which the appellant had stated that he had never been employed in a security role, not as the Judge states at paragraph [19] of his decision, denied having been involved in any security role.

8. Permission to appeal was granted by First-tier Tribunal Judge Mailer on 11th May 2017. He noted that it is arguable that the Judge was required to consider the safety of any proposed route of return following **HH (Somalia) v SSHD [2010] EWCA Civ 426** and it is arguable, as contended in the grounds, that the Judge might have conflated his findings on the asylum claim with his findings on route to return. The matter comes before me to consider whether or not the decision of the FtT Judge involved the making of a material error of law, and if the decision is set aside, to re-make the decision.
9. Before me, Mr Tetley focussed his submissions upon the Judge's failure to adequately address the claim under Article 15(c) of the Qualification Directive. He submits that the FtT Judge failed to consider how the appellant could safely return to Libya in light of what is said at paragraph [33] of the decision in which the Judge accepts that the airport in Tripoli has now been closed, and that amnesty reports do refer to risks to civilians from internal conflict that continues. Mr Tetley submits that the Judge failed to give any or any sufficient reasons for his conclusion that he did not accept that the appellant has made out an inability to travel through Libya such that he cannot return along the well-travelled coastal zone. He submits the Judge failed to take account of the objective evidence as to the civilian casualties caused by the violence, particularly when considering the safety of the proposed route of return.
10. The respondent has filed a rule 24 response dated 11th June 2017 in which the respondent submits that the appeal is opposed. In his submissions before me, Mr Harrison adopted the Rule 24 response. It is

submitted that there is only a technical obstacle to the appellant's return in that Tripoli airport is closed and the respondent is unable to conduct an escorted return of the appellant to Libya until such time as Tripoli airport reopens.

11. I deal first with the Judge's findings of credibility. I have carefully read the matters referred to by the Judge, and his findings at paragraphs [15] to [28] of his decision. I reject the submission that the adverse credibility findings are vitiated by a failure on the part of the Judge to take into account factors pulling in the appellant's favour. Paragraphs [15] to [28] of the decision must be read as a whole. The Judge refers at paragraph [18] of the decision to the photographs submitted in support and it was open to the Judge to conclude that they are of limited evidential weight. The Judge does not expressly refer to the photographs from Facebook, but in my judgement, the failure to expressly refer to those photographs would not be material to the outcome of the appeal in light of all of the other matters that are referred to by the Judge that undermine the credibility of the appellant's account.
12. The appellant gave evidence before the FtT and the Judge had the advantage of hearing the evidence of the appellant. The Judge carefully sets out the evidence before him and considers the inconsistencies in the evidence. It is now well established that although there is a legal duty to give a brief explanation of the conclusions on the central issue on which the appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the Judge. It is equally well established that a finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence. On appeal, the Upper Tribunal should not overturn a judgment at first instance, unless it really cannot understand the original judge's thought process when the Judge was making material findings. Here, it cannot be said that the Judge's

analysis of the evidence is irrational or perverse. The Judge did not consider irrelevant factors, and the weight that he attached to the evidence either individually or cumulatively, was a matter for him. I am satisfied that the Judge's adverse credibility finding is sufficiently reasoned, and was open to him on the evidence.

13. In my judgement, it was open to the Judge to conclude, as he did at paragraph [42] of his decision that the appellant has not discharged the burden of proving a well- founded fear of persecution for a Convention reason.
14. The question of whether the appellant is at risk in Libya for the purposes of Article 15(c), must be determined separately, on the basis of the evidence in the appeal. In my judgement, the Judge failed to adequately address his mind to the question of how the appellant could safely return to Libya in light of what is said at paragraph [33] of the decision. The Judge simply states at paragraph [39] of the decision that the appellant has not made out an inability to travel through Libya such that he cannot return along the well-travelled coastal zone, without setting out the evidence upon which that conclusion is reached. I accept the submission made on behalf of the appellant that the Judge has failed to properly engage with the arguments relative to Article 15(c) generally, but appears to have conflated the Article 15(c) claim with the international protection claim under the Refugee Convention. In my judgment, the Judge's assessment of the Article 15(c) risk is inadequate and the Judge failed to sufficiently engage with the objective evidence particularly regarding the civilian casualties caused by the violence. The failure to engage with the objective evidence and to give sufficient reasons for the finding that the appellant could return along the well-travelled coastal zone, is such that the decision discloses a material error of law. It follows that in my judgement, the decision of the Judge dismissing the appeal under Article 15(c) of the Qualifying Directive must be set aside.

15. Since the decision of the FtT Judge, and the grant of permission, there has been further Country Guidance. In **ZMM (Article 15(c) Libya CG [2017] UKUT 00263 (IAC)**, the Upper Tribunal held as follows:

“The violence in Libya has reached such a high level that substantial grounds are shown for believing that a returning civilian would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to a threat to his life or person.”

16. I re-make the decision. Mr Harrison did not seek to distinguish **ZMM** or make any submission that the appellant would not be at real risk of being subject to a threat to his life or person solely on account of his presence in Libya. Although it is for the appellant to prove his case, the lack of even a suggestion that this appellant would not be at risk renders any further consideration unnecessary, given the Country Guidance decision of ZMM.
17. I allow the appeal on humanitarian protection grounds only.
18. Although I have set aside the decision of the FtT promulgated on 4th January 2017, the appellant’s appeal under the Refugee Convention, and under Articles 2, 3 and 8 of the ECHR, is dismissed for the reasons given by the Judge of the FtT in his decision promulgated on 4th January 2017.

Notice of Decision

19. The appeal is allowed. The decision of the FtT promulgated on 4th January 2017 is set aside.
20. I re-make the decision and allow the appeal on humanitarian protection grounds only.

21. The appellant's appeal under the Refugee Convention, and under Articles 2, 3 and 8 of the ECHR, is dismissed for the reasons given by the Judge of the FtT in his decision promulgated on 4th January 2017.

Signed

Date 28th September 2017

Deputy Upper Tribunal Judge Mandalia

FEE AWARD

No fee is payable and there can be no fee award.

Signed

Date

28th September 2017

Deputy Upper Tribunal Judge Mandalia