



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

Appeal Number: PA/07730/2016

THE IMMIGRATION ACTS

**Heard at Birmingham
On 7 September 2017**

**Decision & Reasons promulgated
On 8 September 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SAJH

(anonymity direction made)

Respondent

Representation:

For the Appellant: Mr Mills Senior Home Office Presenting Officer

For the Respondent: Mrs V James instructed by Immigration Advice Service

ERROR OF LAW FINDING AND REASONS

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Gribble promulgated on 7 March 2017 in which the Judge allowed the appellant's appeal on humanitarian protection grounds. The Judge did not consider the article 8 issue in any detail but opined that in light of the findings in relation to the protection

issue there will be very significant obstacles to the appellant integrating back into Libya and that the claim must succeed on that ground too.

2. The above respondent is a citizen of Libya born in 1984 who is the mother of four children who live with her but who do not have separate claims. On 12 July 2016, the respondent refused the application for asylum.
3. The above respondent was granted leave as a Tier 4 Dependent Partner on 14 October 2009 valid until 31 January 2011. The above respondent returned to Libya and then went to Jordan to undertake a Masters Degree in Computing before returning to Libya in 2011 where she remained until 2013. A further application for leave to enter as a Tier 4 Dependent Partner was made which was granted, valid to 31 July 2017. The above respondent left Libya with her three sons born in 2010 and 2012 for the UK. At that time her application was sponsored by the Libyan government.
4. It was noted the above respondent's husband extended his visa until 2020 but could not afford to extend her visa as a result of which, as her visa was curtailed in 2015 so as to expire on 6 February 2016, the above respondent claimed asylum asserting a real risk of being killed by other tribes in Libya as her tribal ethnicity is that of the former President.
5. The Judge sets out findings of fact from [33]. At [42] the Judge did not find the above respondent's account of being at risk due to being perceived as a Gaddafi supporter likely to be true and that the above respondent did not have a well-founded fear of persecution for a Convention reason.
6. At [49] the Judge found there was a real risk that the appellant will suffer serious harm amounting to inhuman or degrading treatment as required by Article 15 (b) upon return to Libya as the appellant falls within the definition of a vulnerable group. The Judge concludes at [50] that there are substantial grounds for believing that if returned to Libya the above respondent would face a real risk of suffering serious harm on account of the particular vulnerabilities having due regard to the serious humanitarian situation presently in Libya. The Judge did not find this a case where relocation to Tripoli or Khomz is reasonable.
7. The Secretary of State sought permission to appeal asserting that as the above respondent's husband had leave until 2020 the correct course of action for the above respondent would have been to make an application as a dependent. The grounds on which permission to appeal is sought assert that it is unclear why, when this avenue is open to the above respondent, a grant of humanitarian protection will be appropriate as by making the application the above respondent would not be required to return to Libya and therefore not at real risk of ill-treatment that breaches the Humanitarian Protection provisions. The grounds assert that had the applicant made the correct application and paid the correct fee there will be no risk as the appellant would not be required to return.

8. Permission to appeal was granted by another judge of the First-tier Tribunal on the basis the assertions made in the grounds are evident on the facts of the decision and disclose an arguable error of law.

Error of law

9. The evidence before the First-tier Tribunal was that the above respondent and her husband had separated albeit living in the same household. It was also the evidence that funds did not allow an application to be made by the above respondent for the suggested Visa.
10. The grounds on which permission to appeal is sought to not appear in the Secretary of State's refusal letter as maintaining a sustainable argument for not granting humanitarian protection. It must also be remembered that paragraph 339C of the Immigration Rules states:

"A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:

- (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;
- (ii) he does not qualify as a refugee as defined in regulation 2 of the The Refugee or Person in Need of International Protection (qualification) Regulations 2006;
- (iii) substantial grounds have been shown for believing that the person concerned, if returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country; and
- (iv) he is not excluded from a grant of humanitarian protection.

11. Paragraph 339CA defines serious harm.
12. The above respondent is not excluded from a grant of humanitarian protection pursuant to paragraph 339C(iv) and nor does the definition of the person entitled to humanitarian protection make any reference to that person having an alternative remedy. Had the appellant made the application suggested by the Secretary of State in the ground seeking permission to appeal she may have possibly succeeded as suggested although, at this stage, that is hypothetical.
13. What the appellant did do was apply for a grant of International protection. The Judge found the appellant was not entitled to be recognised as a refugee which is a sustainable finding. The Judge thereafter considered entitlement to humanitarian protection by reference to applicable case law found the above respondent satisfied the four requirements of paragraph 339C.
14. As the above respondent satisfied the requirements for entitlement she was arguably entitled to have the appeal allowed.
15. Mrs James also seeks to rely upon the decision of the Upper Tribunal in *ZMM (article 15 (c)) Libya CG [2017] UKUT 263* in which it was found that 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. The finding by the Judge that the appellant faces a risk under article 15(c) if returned to Libya is a sustainable finding both on the evidence the Judge was asked to consider and the country guidance case. No place to which the appellant could relocate to and reasonably be expected to stay in where she would not face such a risk was made out on the evidence considered by the Judge.

16. No arguable legal error material to the decision to allow the appeal is made out. The decision shall stand.

Decision

- 17. There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity

18. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the above respondent is granted anonymity throughout these proceedings. No report of these proceedings (in whatever form) shall directly or indirectly identify the above respondent. Failure to comply with this order could lead to a contempt of court.

Signed.....
Judge of the Upper Tribunal

Dated the 7 September 2017