Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13287/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 March 2018	**On 9 March 2018**

Before

Deputy Upper Tribunal Judge Pickup

Between

IAM
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the appellant: Ms M Butler, instructed by Wilsons Solicitors LLP
For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Bart-Stewart promulgated 22.11.17, dismissing on all grounds her appeal against the decision of the Secretary of State, dated 18.11.16, to refuse her protection claim.

2. First-tier Tribunal Judge Parkes granted permission to appeal on 29.12.17.

3. Thus, the matter came before me on 7.3.18 as an appeal in the Upper Tribunal.

Error of Law

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision should be set aside.

5. In summary, Judge Bart-Stewart had regard to the findings made in the previous appeal decision dismissing the appellant's appeal. The judge found that the appellant's account was not credible and that the claimed newspaper articles were not reliable. The judge did not accept that the appellant's family had left Libya or that the appellant would be at risk from any militia in Libya.

6. In essence, the grounds argue that the judge of the First-tier Tribunal erred in dismissing the appeal by failing to have regard to the evidence of the supporting documents including newspaper articles; failed to consider humanitarian protection on the basis of the country guidance; and failed to have regard to the expert evidence relating to the Qaaqah milita. It is further complained that article 8 was not considered.

7. In granting permission to appeal, Judge Parkes considered that applying Devaseelan principles, the judge was entitled to take a sceptical view of the appellant's credibility and the documentation produced. However, it was arguable that even with the rejection of the claim that the family was no longer in Libya the country guidance had not been followed, and article 8 was not considered. Judge Parkes doubted the extent to which these issues would assist the appellant, but found that as the points were arguable permission should be granted.

8. Events have moved on since the making of the decision of the First-tier Tribunal. Following the decision in ZMM (Article 15(c)) Libya CG [2017] 263 (IAC), it has been accepted that the situation in Libya has deteriorated so that article 15(c) risk of indiscriminate violence applies. For that reason, the Rule 24 response, dated 24.1.18, does not oppose the appeal on humanitarian protection grounds. However, as confirmed by Mr McVeety, the Secretary of State continues to resist the appeal on Convention grounds.

9. Ms Butler confirmed that despite the fact that the humanitarian protection claim is no longer resisted by the Secretary of State and thus the appeal falls to be allowed on that ground, the Convention claim is pursued.

10. In discussion with the two representatives at the hearing before me, it was agreed that whilst the article 8 claim was not addressed, there is no purpose in doing so within this hearing as it stood or fell with the humanitarian protection claim and would in any event provide a lesser degree of protection that humanitarian protection. In the circumstances, it was not necessary to address that issue.

11. I heard submissions on the Convention claim only, following which I reserved my decision and reasons, which I now give.

12. For the reasons set out below, I find that there was no material error in the decision of the First-tier Tribunal sufficient to set aside the decision on the Convention claim.

13. As the judge noted at [38], the entirety of the (Convention) claim rested on the credibility of the appellant's account of being a critic of the previous Gaddafi regime and the militia who have subsequently taken control, by writing articles published in newspapers available in Libya. However, the First-tier Tribunal Judge did not accept any part of the appellant's factual account. As Mr McVeety noted, the appellant has not challenged the findings between [42] and [46] of the decision. In effect, the judge rejected the entirety of the appellant's claim.

14. The judge was entitled to take as a starting point the earlier decision dismissing the appellant's asylum claim in 2015, and noted at [37] that in essence the matters relied on now are the same, save that she relies on further evidence that was not available previously.

15. The judge carefully considered the appellant's account, which is set out in detail in the decision. The three newspaper articles, the claimed Facebook posts, and photographs were referenced at [39] and the supporting witness statements at [40] and [41]. The judge carefully considered and assessed the extent of the difference in evidence between the previous appeal and the current appeal. For example, at [46] the judge gave reasons for rejecting her father's statement as not credible.

16. The judge went on to address and assess the newspaper articles at [47], which were found to be rambling, incoherent and their purpose and context unclear. For that reason, the judge reached the conclusion that even if these were published as claimed, they would not now, some 4 years later, place her at any risk. Emails relating to the articles were addressed between [48] and [51], with the judge concluding for the reasons set out that she could not attach any weight to the articles the supposed originals of which were produced at the hearing, too late to enable verification.

17. Complaint is made in respect of these articles, the emails, and the supporting witness statements, that it was wrong for the judge to give no weight to the evidence, a point which Mr McVeety accepts in principle. However, the judge gave cogent reasons within the decision. The assessment of the articles does not end there, as at [57] the judge returned to that evidence and considered its reliability in the context of the evidence as a whole, concluding that no reliance could be placed on these documents. The judge also doubted their provenance.

18. Effectively, whilst better language may have been deployed, such as according 'little' or 'limited' weight, the reality of the situation is that an

adequate assessment was made of the evidence, in the context of the whole, and that the judge concluded that the appellant had failed to demonstrate that the articles could be relied upon. In the circumstances, I find any error of law in this regard is not material to the outcome of the appeal. However it was phrased, cogent reasoning was provided for dismissing the appeal. The grounds in this regard are little more than a criticism of terminology. Reliance on form rather than substance is insufficient to establish a material error of law.

19. I reject the related submission of Ms Butler that at [57] the judge accepted that the appellant wrote the three articles. Reading the decision as a whole, it is clear that the judge did not accept that proposition, but effectively stated at [57] that even if she gave the benefit of the doubt, at the highest the evidence was of three articles published several years ago, with no evidence that the appellant had any profile in Libya. The judge gave perfectly adequate reasons for concluding that the articles, which were “hardly memorable,” did not present a risk for the appellant today.

20. Complaint is also made that the judge failed to have regard to the country expert evidence as to the risk from the Qaaqah militia. I am satisfied that the judge considered the evidence as a whole, as stated within the decision. At [16] the judge referenced the expert evidence relied on of Professor Joffe and Dr Cherstich. However, this aspect of the case, that there is a Qaaqah militia, that they continue and pursue vendetta, and that criticising a militia publically would put a person at risk of being placed on a target list, had to be considered in the context of the findings as to the credibility of the appellant’s factual claim. The appellant was found not credible and her account rejected. In the light of those clear findings, there is no real basis for the appellant being at risk on return on the basis of articles which were found not to be reliable. Outside the article 15(c) risk, the expert evidence is premised on the basis that the appellant would be at risk as an activist who has criticised the militia in articles. That premise was rejected by the Tribunal, for cogent reasons clear discernible in the decision. In the circumstances, there is no material error in any omission to address the expert evidence in more detail.

21. In the light of the comprehensive findings rejecting the core basis of the appellant’s account of being a critic of the regime and the militia, there is no material error of law in the subsidiary point that the appellant would be at risk because she would continue to be a political activist on return to Libya and cannot be expected to curtail that activity or supress her opinions.

22. In the circumstances, I find that the decision insofar as it relates to the Convention claim is sustainable and does not demonstrate any material error of law. However, as stated above, following the change to the Country Guidance, the Secretary of State now agrees that the appeal falls to be allowed on human rights grounds.
23. The parties agreed that it was unnecessary for the Tribunal to consider the article 8 human rights grounds.

Conclusion & Decision

24. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I re-make the decision in the appeal by dismissing it on Convention grounds but allowing it on humanitarian protection grounds only.

Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014. However, given the alleged risk aspects, I consider it appropriate to make an anonymity direction.

Direction Regarding Anonymity - Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Breach of this direction may lead to proceedings for contempt of court.

Fee Award *Note: this is not part of the determination.*

I make no fee award.

Reasons: No fee is payable.

Signed

Deputy Upper Tribunal Judge Pickup

Dated