



Upper Tribunal
Immigration and Asylum Chamber

Appeal Number:
AA/03200/2013

THE IMMIGRATION ACTS

Heard at Field House
On 11 October 2013

Date Sent
On 14 October 2013

Before

Upper Tribunal Judge Kekić

Between

Mrs Salima Khalifa Enbaya
(no anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

Determination and Reasons

Representation

For the Appellant: Mr S Jaisri, Counsel

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Details of appellant and basis of claim

1. This appeal comes before me following the grant of permission to appeal to the appellant by First-tier Tribunal Judge Pooler on 23 August against the determination of First-tier Tribunal Judge Bird dated 30 July 2013. No

anonymity order was made of the First-tier Tribunal and none has been requested of the Upper Tribunal.

2. The appellant is a Libyan national born on 1 January 1954. She arrived here as a visitor in late 2011 and a few months later claimed asylum. Her husband and children had accompanied her and are dependent upon her claim. The purpose of the visit was so that her husband could receive medical treatment. After their arrival rebels had taken hold of Tripoli, ransacked her house and had been looking for her husband who had been a Major Brigadier in the Libyan Police Force until his retirement in 2002. For this reason she feared that she and her family would be at risk. The situation was exacerbated by the fact that they were from the Deke tribe from Benhi Walid which had supported Gaddafi. The respondent refused the application on 18 March 2013.

Proceedings before the Upper Tribunal

3. For the appellant, Mr Jaisri argued that the judge had failed to make a clear finding on whether it was accepted that the appellant's husband had been a high ranking official in the police force. It was further argued that if this had been accepted, then the judge had failed to adequately explain why someone with such a profile would be able to return safely and had failed to engage with the background evidence relating to such persons which she had been referred to. It was also argued that the judge had failed to give reasons for why she found the evidence of the appellant to be vague and had also failed to engage with the aggravating fact that she and her husband came from Gaddafi's tribe and would be perceived as a loyalist.
4. Mr Avery responded. He maintained that the judge had accepted that the appellant's husband was a high ranking police official but had nevertheless found that he would not excite any adverse attention upon return. His past occupation was not a compelling risk factor particularly as he had retired over 10 years ago. The judge was entitled to find that the witnesses were vague. This evidence related to how the appellant had learned of the raid on her house and there had been issues over this even at the interview. She had not provided details of the neighbours from whom she had allegedly obtained this information. With regard to their place of origin, there was no evidence that this was a determinative factor. The background evidence had been considered.
5. Mr Jaisri replied. He submitted that apart from the answers given by the appellant at the interview with respect to the raid on her house, she had

provided further evidence. The judge had been referred to the background material but had failed to consider the husband's profile in the context of that evidence. At my request Mr Jaisri listed various pages of the bundle which he maintained were relevant to the claim. He repeated his earlier argument that the family would be perceived as loyalists because of their tribal origins and that this factor had not been considered.

6. That completed the submissions. At the conclusion of the hearing I reserved my determination which I now give.

Findings and Conclusions

7. I have considered all the evidence and submissions carefully. I do not find any merit in the first ground of appeal i.e. the allegation that the judge did not make a clear finding that the appellant's husband was formerly a high ranking official in the police force. At paragraph 3 the judge notes the appellant's evidence that her husband had worked in the police force. At paragraph 5 she notes his rank was Major Brigadier. At paragraphs 11 and 14 when summarising the refusal letter the husband's occupation is referred to. It is repeated at paragraph 20 when the judge confirms she has taken account of the grounds of appeal which set out his position and tribal origins. There is further reference to it in the summary of the submissions made by both sides.
8. The judge then turns to her findings. At paragraph 41 she states: *"The appellant's claim rests on the fact that her husband was a high ranking police official under the Gaddafi regime. He retired from his post in 2002/2003 and has received recommendations for his service. The appellant has produced documents to support this"*. She then continues: *"On the lower standard, I accept that the appellant's husband was in the police force as claimed and that he retired around 2002/2003"*. In paragraph 42 she confirms that she has *"accepted that the appellant's husband was in the police force"* and at paragraph 47 she refers to the *"appellant's husband's standing in the police prior to 2003"*. Given these repeated statements and the earlier references to the husband's position, it is clear to me that the judge accepted the claim as put in this respect. Had she only accepted that he was a police officer and not that he was of the rank claimed, she would, no doubt, have said so after making her findings in paragraph 41.
9. The second complaint is that if this profile was accepted, then the judge was wrong to find that it would not attract adverse in the appellant and her family. This is linked with the criticism that the profile and risks were

not considered in the light of the country material. It also ties in with the claim that the evidence of the appellant was vague.

10. The judge noted the appellant had said she had claimed asylum because her husband needed medical treatment and that this was corroborated by their daughter. She found this to be significant and considered that it was his need for medical treatment that had led to the family's departure rather than a need for international protection.
11. The judge then considered the sur place claim. This arose from the alleged news obtained from Tripoli that their house had been ransacked by people looking for the appellant's husband. The judge plainly did not accept this part of the appellant's account. Whilst it is alleged that she gave no reasons for why she found this evidence to be "*vague*" a careful reading of the determination makes this plain. The judge refers to the appellant having heard that her house had been "*destroyed and divided into two*" (paragraph 4), that she had been told in June 2011 (which would be prior to her arrival in the UK in August) that an unknown group of armed rebels had been told where her husband was (paragraph 8), that she had "*been unable to give details as to who the neighbours were who had informed her*" and that these neighbours had been informed by "*street children*" (paragraph 15), that her siblings had not notified her of the alleged raids and destruction of her house and that none of her neighbours or family members who remained in Libya had made statements in support of these claims (paragraph 48). Those are ample reasons to support the conclusion that the evidence in respect of the circumstances giving rise to the sur place claim was vague.
12. There remains the issue of whether in the absence of any specific event which showed that the appellant and/or her husband was of interest, he had a profile which in itself would be sufficiency to place them at risk. The judge asked herself this question and also considered whether the tribal factor would be relevant (paragraph 41). At paragraph 44 she does take account of the evidence referred to and notes that that there were steps to take senior officials into custody by the incoming regime. Further evidence is referred to at paragraph 45 where the judge notes that various suspected Gaddafi loyalists are taken into custody by opposition militia. The OGN is considered at paragraphs 45-46. The judge differentiated those cases from the circumstances of the appellant and her husband noting that the husband had not been in active service for over ten years; indeed he is now elderly and infirm as well. She further found that the rest of the family lived in Tripoli without incident; that undermined the

claim that a tribal connection would result in them being perceived as Gaddafi loyalists. Those were findings plainly open to her to the evidence.

13. For all these reasons, I find that the judge was entitled to find as she did. The grounds do not show that she erred in law.

Decision

14. The First-tier Tribunal did not make any errors of law. The decision to dismiss the appeal is upheld.

Signed:

Dr R Kekić
Judge of the Upper Tribunal

11 October 2013