



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

Appeal Number: AA/10155/2013

THE IMMIGRATION ACTS

**Heard at : Field House
On : 18 July 2014**

**Determination Sent
On : 31 July 2014**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**AE
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Ajina of Arden Solicitors Advocates

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before me following the grant of permission to appeal on 14 May 2014.

2. The appellant is a national of Libya born on 29 September 1991. He resided in the United Kingdom from 1993 until 2000 as a dependant on his father's student visa. He returned to the United Kingdom in 2008 on his own student visa and, other than short periods of visits to Libya, remained in the United Kingdom as a student and Tier 4 student migrant since that time. His

last entry to the UK was on 19 April 2011, which followed a period of stay in Libya from 24 February 2011. His visa was due to expire on 31 October 2013 and he claimed asylum on 30 September 2013. His claim was refused on 22 October 2013 and a decision was made to refuse to vary his leave to remain and also to remove him from the United Kingdom.

The Appellants' claim

3. The appellant claims to fear persecution as a result of the changed circumstances in Libya and his sur place pro-Gadaffi political activities. A summary of his claim is as follows. He is from Sirte, a member of the Ghuoos clan, part of the Gadadfa tribe and was distantly related to Gadaffi. Members of his family who were ministers and military officers during the Gadaffi regime had either been killed or fled following the 2011 uprising. He attended a pro-Gadaffi demonstration outside the Libyan Embassy on 17 February 2011, which was broadcast on Libyan national TV. On 22 February 2011 he and his friends were assaulted by a group of supporters of the Libyan rebels. Two days later he went to Libya and stayed in Tripoli before returning to Sirte where he helped man checkpoints throughout the city. He attended a mass demonstration against the air embargo in Sirte in March 2011. His family remained in Sirte. Since the uprising he had been politically active and vocal in his opposition to the Libyan revolution and current Libyan government. Since August 2011 he had made 15 short videos for YouTube which had been uploaded onto an independent journalist's YouTube channel. All but one of the videos were political in nature, criticising the current government. The last one was uploaded in October 2012, but the videos remained on YouTube. He had also been politically active through his facebook page and, since the start of the revolution, had been posting comments, pictures, videos and articles against the revolution and the government. His political views were considered a criminal offence in Libya and he would be imprisoned or killed on return and would be targeted by armed militia. His family home in Sirte was looted by armed militia when his family moved temporarily to Tripoli, with the neighbourhood being targeted for its known Gadadfa tribal affiliation.

4. The respondent, in refusing the claim, did not accept the appellant's account of his ethnicity and his family links to the Gadaffi regime. It was not accepted that he would be recognised as having worked at checkpoints or that he would be targeted for attending a demonstration along with the entire city in March 2011. With regard to the YouTube screen shots, the respondent noted the background evidence of the growing use of social media in Libya and the large number of people googling information about the rebels and considered that there were many other young Libyan who had spoken out against the rebels. It was noted that his father took a sabbatical from his post as associate professor at the University of Sirte and came to the United Kingdom, with his trip funded by the university, but then returned to Libya. The respondent concluded that the appellant had fabricated his claim and did not consider that he would at any risk on return to Libya.

5. The appellant's appeal against that decision came before Judge O'Keefe in the First-tier Tribunal on 7 March 2014. The judge accepted, from the evidence produced before her, that the appellant was part of the Gadadfa tribe and

Ghuoos clan. She accepted that he had attended a demonstration on 17 February 2011 and that he had been photographed at the demonstration, but she did not accept that footage had been shown on Libyan TV. She did not find that the appellant's presence in manning the checkpoints in Sirte or his attendance at a mass demonstration in Libya in March 2011 would have brought him to the adverse attention of the current regime or militia groups. The judge accepted that the appellant had been using social media to speak out about events in Libya but found no evidence to suggest that the postings had attracted any adverse attention so as to put him at risk. With regard to the DVDs containing the video footage that could be viewed through YouTube, she noted that the appellant had not been mentioned by name, that the videos had been posted on the account of another user, that the majority of the videos were posted in 2011 and that there was then a gap between 27 October 2012 and the most recent video on 3 February 2014. She noted that the videos were not exclusively anti-regime and concluded that they would not put him at risk. She did not consider that the messages posted on his facebook account would have brought him to the adverse attention of the regime. She did not find that he would be at risk by virtue of his tribal affiliation. She did not consider that the Libyan authorities would have continued to fund his studies as they had, if his profile was considered to be against them. She did not find that the appellant would be at risk on return and she accordingly dismissed the appeal on asylum, humanitarian protection and human rights grounds.

6. Permission to appeal that decision was sought, *inter alia*, on the grounds that the judge's finding, that the appellant had not demonstrated that he had attracted or would attract any adverse attention as a result of his political activity, was at odds with the objective evidence before her.

7. Permission to appeal was initially refused, but was subsequently granted upon a renewed application, on 14 May 2014.

Appeal hearing

8. The appeal came before me on 18 July 2014 and I heard submissions on the error of law.

9. Mr Ajina referred to the grounds of appeal, submitting that the judge had failed to give proper consideration to the background information when concluding that the appellant would not come to the adverse attention of the Libyan authorities. The appellant had produced evidence of 16 YouTube videos, in the form of DVDs, and 78 pages of facebook posts and comments from his personal facebook account dating back to February 2011, as well as evidence of attendance at two demonstrations on 17 February 2011 and 19 February 2014. The skeleton argument before the judge referred to extracts from the background information in which reference was made to the Libyan authorities conducting internet surveillance. The background information was before the judge but she did not refer to it. With regard to the funding of the appellant's studies, the judge failed to note that the new law preventing those hostile to the regime from receiving scholarships was passed after the appellant had completed his studies. The judge also erred by considering that

the appellant was claiming to be at risk merely on the basis of his ethnicity, which he was not. There was no proper analysis of risk.

10. Ms Everett acknowledged that she was in some difficulty as she had not seen the DVD footage herself, although it seemed that the judge had given reasons why that would not give rise to a risk to the appellant. She accepted that there was a problem with paragraph 35 of the judge's decision in regard to a Google search conducted by the respondent, as it did not specify whether those searching the internet were all Libyans. She considered that the real issue of relevance was whether or not the appellant would be identified as a result of his facebook postings. She accepted that if he was, he would be at risk, but she submitted that the judge did not have evidence before her of the Libyan regime monitoring websites.

11. Mr Ajina, in response, submitted that the judge did have such evidence before her and he directed me to it.

12. On the basis of the narrow issue properly identified by Ms Everett in the appeal, I concluded that the judge had erred in law and that she ought, on the basis of that evidence, to have allowed the appeal.

Consideration and findings.

13. It was accepted by Judge O'Keefe that the appellant had posted messages on his facebook account and had posted videos on YouTube. At paragraph 34 of her determination she did not consider that the content of the videos were such that he would be perceived as being in favour of the previous regime and against the current one. However at paragraph 50, when referring to the YouTube videos and facebook comments, she found that they could be considered as political in nature. Nevertheless she did not consider that the appellant had thereby demonstrated that he had attracted or would attract any adverse attention as a result of those postings.

14. The reason for that finding is to be found at paragraphs 35 and 37, where at paragraph 35 the judge considered that the large number of Libyans using the internet and facebook meant that his postings would not have brought him to the attention of the authorities. Ms Everett, however, conceded that there was a problem with the judge's reliance on the respondent's reference to a Google search, as it did not identify whether those conducting the searches were Libyan nationals.

15. At paragraph 37 the judge said that she had considered the background information submitted by the appellant and she referred in particular to a January 2012 Amnesty International report which referred to Libyans enjoying greater freedom and being able to openly voice their criticism of the former regime. However what she failed to do was to make any reference to the background materials provided by the appellant in his appeal bundle and the skeleton argument regarding the limitations on the ability of Libyans to openly criticise the new regime and to voice pro-Gadaffi sentiments. References were made in the skeleton argument before the judge to the continued application of

the Libyan penal code in criminalising activities of Libyans abroad against the interests of the state and to the continued use of surveillance equipment.

16. Paragraph 2.5 of the skeleton argument before the judge quoted from the Asylum Research Consultancy report “Libya Country Report dated 5 July 2013”, referring to “credible reports that the government monitored email or internet communication”. Reference was also made in the skeleton argument to the UNHCR refworld report entitled “Freedom on the Net 2013 – Libya” which is included in the appellant’s appeal bundle at page 174 and which refers, at page 180 of the bundle, to reports of the surveillance tools left over from the Qadhafi era being restarted. Further, the appellant’s supplementary bundle contained an internet article taken from an official Libyan government website referring to procedures proposed to confront the public activities of Libyan students and residents abroad, pursuant to Decision No. (13) issued by the Head of the General National Conference for the year 2014. Those procedures involved not only the setting up of a decision to stop scholarships for students studying abroad and to stop salaries to employees associated with the Libyan Government abroad who had led or participated in activities against the 17 February revolution (as referred to by the appellant himself in his evidence), but also to a request to ministries and associated offices to refer lists of their names to the public prosecutor in order to take “necessary procedures to commence interrogations with them”.

17. In the circumstances, it seems to me that, whilst the background materials before the judge did indeed refer to the opening up of and widening of access to the internet and social media under the new regime, as she noted, there was also evidence of surveillance used by the regime and of the monitoring of the internet and of diaspora activities which she failed to address and which, on a lower standard of proof, ought to have led her to conclude that there was a reasonable likelihood that the appellant was, or may be, if questioned on return to Libya, known to and adversely regarded by the Libyan authorities.

18. Accordingly on the basis of Ms Everett’s concession that the appellant would be at risk if there was evidence of the Libyan regime monitoring websites and in the light of the above background evidence, it seems to me that he has demonstrated, to the lower standard of proof, that he has a well-founded fear of being persecuted in Libya for one of the reasons set out in paragraph 6 of the 2006 Regulations and that his removal would breach Article 3 of the ECHR.

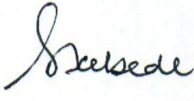
DECISION

19. The making of the decision by the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision and re-make it by allowing the appellant’s appeal on asylum and Article 3 human rights grounds.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that

order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed 

Upper Tribunal Judge Kebede