



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

Appeal Number: IA/21679/2013
IA/21680/2013
IA/21682/2013
IA/21683/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
on 17 February 2014**

**Determination promulgated
On 19 February 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

KB + 3

and

Appellants

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr R Gibb, of Quinn, Martin & Langan, Solicitors
For the Respondent: Mrs M O'Brian, Senior Home Office Presenting Officer

Anonymity direction made.

DETERMINATION AND REASONS

- 1) The appellants are four citizens of Libya. They appeal against a determination by First-tier Tribunal Judge Ferguson, promulgated on 22 November 2013, dismissing their appeals under the Immigration Rules and under reference to Article 8 of the ECHR; finding removal decisions not in accordance with the law; and declining to deal with claims made under the Refugee Convention.
- 2) The judge overlooked that section 51(3) of the Crime & Courts Act 2013 amended section 47 of the Immigration, Asylum & Nationality Act 2006 from 8 May 2013 to the

effect that removal decisions can be made along with refusals of variation of leave to remain. That was an error of law.

- 3) The appellants raised their asylum claim by way of a statement of additional grounds under section 120 of the 2002 Act, rather than by the principal appellant presenting himself as an asylum applicant for the usual processing and interview (as the respondent suggested he should do). They also chose to have their cases decided “on the papers”, without oral hearing. The circumstances were somewhat unusual, and the judge thought that the First-tier Tribunal should not become effectively the original decision maker. However, the statutory ground of appeal in terms of section 84(1)(g) that removal of the appellants would breach the UK’s obligations under the Refugee Convention was properly before the First-tier Tribunal, and under section 86(2) the First-tier Tribunal was obliged to determine it. Not to do so was another error of law.
- 4) Further procedure is more problematic. There is a good argument, as the Presenting Officer observed, for correcting the First-tier Tribunal’s error by substituting a decision based upon such evidence as the appellants chose to place before the First-tier Tribunal. (If the outcome were negative, the appellants might seek to proceed by way of a fresh claim, but that is presently beside the point.)
- 5) The appellants have put in written applications for admission of various further evidence, if error of law were to be found and the case remitted to the First-tier Tribunal. By implication, that suggests that they now seek an oral hearing there. Mr Gibb confirmed that such is their preferred course.
- 6) Whether further evidence is admitted in the First-tier Tribunal will be a matter for future consideration there, although broadly, and pragmatically, it seems to me that there should be a fresh First-tier Tribunal decision based on all relevant evidence to date.
- 7) Mr Gibb accepted that if the case were to go to an oral hearing in the First-tier Tribunal, it was for the appellants to resolve any question of payment of an additional fee. He was not aware of the relevant procedure. Since the hearing, I have referred to the First-tier Tribunal (Immigration & Asylum Chamber) Fees Order 2011, article 3. There appears to be an additional fee payable of £60. It is the duty of the appellants to proceed immediately to enable their appeal to be determined through an oral hearing.
- 8) The determination of the First-tier Tribunal **errs in law**, as found at paragraphs 2 and 3 above. It is **set aside** in its entirety. Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to **remit the case to the First-tier Tribunal**. The members of the FtT chosen to reconsider the case are not to include Judge Ferguson.

- 9) Both parties sought time to prepare for the next hearing. It was agreed that this should **not be listed for 8 weeks**; that no further directions were needed; and that **an interpreter will not be required**.
- 10) An anonymity order was asked for at the hearing, and was granted without objection by the respondent. It is therefore directed that the appellants be **granted anonymity** throughout these proceedings unless and until a court or tribunal directs otherwise. No report of these proceedings shall directly or indirectly identify the appellants or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to a contempt of court. Whether such an order remains in force is a matter to be addressed in the First-tier Tribunal (see the Presidential Guidance Note No 2 of 2011).



18 February 2014
Judge of the Upper Tribunal