



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

Appeal number: AA/02008/2015

THE IMMIGRATION ACTS

Heard at Manchester

**Decision and Reasons
Promulgated**

On January 29th, 2016

On February 3rd, 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

**MR SALAH FINER
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Mr Chopra (Legal Representative)

Respondent

Ms Johnstone (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant, [a] citizen of Libya, last entered the United Kingdom as a student on February 11, 2010. He had been studying in the United Kingdom since 2008 when he entered on a six-month student visa. His visa expired on July 24, 2014 and he claimed asylum on August 18, 2014 and was served with form IS151A as an overstayer.
2. The respondent rejected his application on January 22, 2015 and took a decision to remove him by way of directions pursuant to Section 10 of the Immigration and Asylum Act 1999. The appellant appealed that decision

on October 6, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. The appeal came before a panel of Judges consisting of Designated Judge of the First-tier Tribunal McClure and Judge of the First-tier Tribunal Buzzard on May 22, 2015. They refused the appellant's appeal in a decision promulgated on June 8, 2015.
4. The appellant sought permission to appeal that decision on June 23, 2015 on the basis the panel had erred factually and placed too much emphasis on insignificant factors.
5. The appellant was granted permission on July 6, 2015 on the basis it was arguable that if the panel submitted a serious factual this might translate into an error in law.
6. The appellant's representatives filed a Rule 24 response dated July 13, 2015 in which it was argued that even if there had been a factual error the panel had correctly dismissed the appeal having regard to the country guidance decision of AT and others (Article 15(2); risk categories) Libya CG [2014] UKUT 00318 (IAC).
7. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I make no order now.

SUBMISSIONS

8. Mr Chopra submitted that the Panel had erred because factually they had erred in their recording of the evidence. He submitted the Panel erred because at Q66 and 67 the appellant had stated that after the fighting between the Mishasha and Zintan began in June 2012 his brother was forced to help the militia, He stated his brother had been detained by the Zintan authorities for ten months before being released on condition he reported to their Tripoli branch office On July 21, 2014 he was en-route to the Garaboli area, east of Tripoli, when he was stopped at a Misratah checkpoint and then kidnapped. The Panel erred because his brother had not been detained in 2012 but in 2014 and the detention took place in Garaboli and not in Zintan as suggested by the panel. Mr Chopra submitted this error infected the Panel's finding on credibility and ultimately their decision as to whether his family were high profile. The Panel failed to have regard to the fact he had not completed his military service, he came from an area that supported Qadhafi, the Zintan group opposed Qadhafi or that they continued to look for him.
9. Ms Johnstone submitted that the appellant's answer at Q66 and subsequent statements do not state he was not in the Zintan area and whilst the appellant may have meant that it was not something that was made clear in either his statements or oral evidence. Even if the Tribunal had misunderstood/misread his evidence it was not material because the

Panel went on to make numerous other adverse credibility findings in paragraphs [50] to [52]. The Panel had regard to paragraphs [18] to [22] of the refusal letter and properly considered at paragraphs [53] to [55] of the decision how the country guidance decision of AT would affect the appellant's case and concluded that he did not fall within the risk categories set out in the case. There was no error in law.

10. Having heard the above submissions, I reserved my decision.

DISCUSSION AND FINDING ON ERROR IN LAW

11. The appellant was by his own admission a member of the Zintan tribe who were supporters of the former Qadhafi regime. He had effectively been living in the United Kingdom since 2008 having entered as a student and although he visited Libya it is fair to say that he has spent most of his time in the United Kingdom since 2008.

12. The appellant's claim was that his father and brothers were in Qadhafi's army with his father and one of his brothers being sergeants and his other brother being a captain. His father had retired in 2002. The respondent rejected the appellant's claim that his family had been targeted and at paragraph [20] of the refusal letter she gave her reasons for rejecting the account.

13. In paragraph [49] of the panel's decision they recorded the following matters:

- a. At SEF Q66 the appellant stated that his brother, Adil, was kidnapped by the Misratah militia in 2012.
- b. This claim was inconsistent with his written statement that other militia were not able to enter the Zintan territory prior to July 2014.
- c. In his oral evidence the appellant did not identify the Misratah militia as one of those that had threatened him despite his earlier statement that it was they who had kidnapped his brother.
- d. The appellant's failure to be consistent in his statements about the non-Zintan militia who had threatened and kidnapped his brother created considerable doubt over the veracity of the claimed threats.
- e. For these reasons we find the appellant's claim he was threatened not to be true.

14. In giving permission to appeal the Judge stated that a "serious factual error ... might translate into an error in law". The facts as recorded by the Panel are, as argued by Mr Chopra, incorrect. He did not claim his brother was captured in 2012 but stated both at Q67 and 73 that he was captured in 2014.

15. There is also an issue over where the kidnapping took place. That issue is not as clear cut because the appellant's evidence was his brother was stopped at a checkpoint. That implies he could well have been in Zintan.

16. However, other adverse findings were made on credibility and these findings are not directly challenged. The grounds of appeal argue why the Panel was wrong to make an adverse finding but simply put the Panel's findings in paragraphs [50] to [52] are not challengeable because they were open to the Panel to make. The Panel was entitled to make an adverse finding on the timing of his asylum claim in paragraph [50], the absence of the original documents when copies had been sent to him in paragraph [51] and the timing of him receiving the documents in paragraph [52].
17. Ms Johnstone submitted that even if the Panel erred in paragraph [49] of its decision it was not material because the Panel properly applied the latest country guidance on Libya and reached the only conclusion open to it from paragraphs [52] onwards of the decision.
18. The headnote of AT and others (Article 15(2); risk categories) Libya CG [2014] UKUT 00318 (IAC) provides the Tribunal's conclusions on those persons facing a risk of persecution.
19. The appellant's father was a sergeant in Qadhafi's army at a time when Qadhafi was in power but he was not targeted by the militias between 2011 and 2014. One of his brothers was a captain and the other a sergeant. The evidence presented both to the respondent and the Tribunal does not, despite Mr Chopra's arguments, suggest either the appellant or the appellant's family were former high ranking officials within the intelligence services of that regime or others with an association at senior level with that regime.
20. The appellant is a student who left the country in 2008. Contrary to Mr Chopra's submission the appellant did carry out his national service and even if the Panel accepted his account he personally did not fall into the risk category identified at headnote 3 of AT.
21. Mr Chopra's argument has to be that if his account of what happened to his brother was credible then he was a family member of someone who had problems with the militias.
22. However, the Tribunal in AT considered the position of family members and concluded at headnotes 5 and 6-
 - "5. The majority of the population of Libya either worked for, had some association with, or has a member of the family who worked for or had an association with the Qadhafi regime. Such employment or association alone is not sufficient to establish a risk of persecution or Article 3 ill-treatment on return.
 6. In general, family members of those described in (3) and (4) above are not at risk of persecution or a breach of their protected rights on return. It is possible, however, that an individual will be able to establish such a risk but this will need to be demonstrated by specific evidence relating to the individual's circumstances. Mere assertion of risk by association as a family member would not be sufficient without fact-specific evidence of the risk to that particular family member."

23. The issue therefore is whether the Panel's error on the date of the kidnapping of the appellant's brother would bring the appellant within headnote 6.
24. The Panel properly considered all of the evidence and whilst there was a mistake over the date the circumstances were recorded correctly and the Panel went onto make other findings on credibility that led it to reject the appellant's claim.
25. Based on those findings I am satisfied that the mistake over 2012/2014 was not material because the facts remained the same that his brother had allegedly been kidnapped by the Misratah militia. This was something the Panel rejected in any event.
26. The Panel applied the country guidance case correctly and I am satisfied that the appellant does not fall within any of the risk categories and consequently there is no material error.

DECISION

27. There was no material error and I uphold the earlier decision for the reasons set out above.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

No fee award was made in the First-tier and I have dismissed the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis