



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/04521/2015

THE IMMIGRATION ACTS

Heard at: Manchester  
On 6<sup>th</sup> May 2016

Decision & Reasons Promulgated  
On 20<sup>th</sup> May 2016

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

WA  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Chopra, Cohesion Legal Services Ltd

For the Respondent: Ms Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a female national of Libya born in 1988. She has permission<sup>1</sup> to appeal against a determination of the First-tier Tribunal (Judge G.D Tobin)<sup>2</sup> to dismiss her appeal against a refusal to vary her leave to enter and to remove her from the United Kingdom, that decision following the rejection of her asylum and human rights claim.

---

<sup>1</sup> Permission was granted by First-tier Tribunal Judge Shimmin on the 28<sup>th</sup> August 2015

<sup>2</sup> Determination promulgated 7<sup>th</sup> July 2015

## Background to Appeal

2. The Appellant arrived in the United Kingdom on the 3<sup>rd</sup> November 2013 and was given leave to enter as a Tier 4 (General) Student Migrant. She claimed asylum on the 25<sup>th</sup> September 2014.
3. The basis of her claim was that she was facing forced marriage to a 55 year-old militia leader. When she had returned home on a visit her family had informed her that he was to be her husband. The Appellant explained that her family had been Gaddafi supporters and that after the revolution they were in a weakened position. This man was from another branch of their tribe which was pro-revolution and he had helped them, giving them protection and money. The Appellant's family were therefore beholden to him and when he asked for her hand in marriage they felt that they had to agree. She did not want to marry him and in fact was in a relationship with a different man in the UK. The militia leader in Libya had found out about this and had threatened the Appellant's family in Libya. He had fired shots at their home and demanded his money back. The Appellant is now afraid of him, but also her brothers who regard her as having besmirched their 'honour'. They are Berbers and the Appellant's partner in the UK is Arab. Their relationship will not therefore be accepted.
4. The Respondent refused the claim in a letter dated 3<sup>rd</sup> March 2015. It was accepted that 'honour' killings do take place in Libya. It was not however accepted that the Appellant was reasonably likely to fall victim to one. That was because she had given a discrepant account and the Respondent did not believe that she was facing forced marriage, or that she had brought any 'dishonour' upon her family by refusing such a union. She had for instance given inconsistent dates about when the engagement party had taken place and her claim that her family were poor and disadvantaged was inconsistent with the fact that she was a 5<sup>th</sup> year medical student who had the funds to travel to the UK for post-graduate study. It was also accepted, in line with the country guidance case of AT and Others (Article 15 (c); risk categories) Libya CG [2014] UKUT 00318 (IAC), that high ranking and prominent Gaddafi supporters may be at risk of persecution in Libya today. It was not however accepted that the Appellant would be at risk for that reason. On her own evidence her father who had been a soldier in the Libyan army had died a number of years ago. There was no reason to believe that she would be identified as a high ranking Gaddafi supporter.
5. When the appeal came before the First-tier Tribunal the Appellant maintained her account. She averred that she would not be able to return to her family in Tripoli because her brothers and/or the militia man would attack her. She could not avail herself of internal flight because it would be dangerous for a woman trying to live alone in Libya. The Appellant maintained that she was in a relationship in the UK, and called her partner to give evidence. That gentleman, Mr B, produced evidence to confirm that he has been suffering from

cancer and stated that he was dependent upon the Appellant for her help and support.

6. The First-tier Tribunal did not believe that the Appellant was in a relationship in the UK. Having heard the oral evidence of both witnesses the Tribunal was “not convinced” that they were in a genuine long-lasting relationship [§ 34]. The first reason given is that a letter from a Macmillan Haematology Nurse dated 3<sup>rd</sup> December 2013 made no mention of their “blossoming relationship”; secondly the Tribunal “did not believe” that she would have told no-one in her family about the relationship prior to her betrothal in Libya; finally their evidence “lacked detail” and was “vague and unconvincing”. It was not accepted that the Appellant would be at risk of honour killing. The Tribunal “did not believe” that the level of public disgrace was such that she would be at risk. She had described being subject to social approbation during her last visit but not receiving a “good welcome” is not persecution. The Tribunal rejected the Appellant’s claims to be from a “poor” family since she was a medical student who could afford to study abroad.

#### **Error of Law**

7. The grounds of appeal are not particularly helpful. It appears to be argued for instance that the First-tier Tribunal erred in its conclusions because ‘honour’ killings do happen in Libya. That these murders do occur was not in issue and was of course expressly accepted by the Tribunal.
8. I am nevertheless satisfied that this decision must be set aside for the following errors of law:
  - a) Failure to take material evidence into account/giving weight to immaterial factors

The Tribunal does not accept that the Appellant is in a relationship in the UK. The main reason given for this finding is, with respect, slightly illogical. The Tribunal cites a letter from a doctor who was treating her claimed partner for cancer. It is dated December 2013 and the Tribunal draws adverse inference from the fact that the doctor does not refer to him having a partner. It was their evidence that although they were then sharing a house they did not form a relationship until January 2014. Why the doctor should mention his flatmate is not clear. The greater error is the fact that there were at least two subsequent letters from doctors who are treating this gentleman which do refer to the fact that he is receiving support from his partner in the UK. These letters were written doctor – to – doctor and had not been generated for the purpose of the appeal. Absent sophisticated and cynical ‘evidence planting’ by this man

they were documents which were capable of lending significant weight to the claimed relationship.

b) Findings not based on the evidence

At paragraph 31 the Tribunal finds that the Appellant's rejection of the militia would not raise questions of 'honour'. The reason given is that this was not a love marriage. The Tribunal appears to find that the militia leader was not interested in marrying her for love, and that he would not therefore mind that she had broken off their engagement. There was no evidential basis for this analysis. There is nothing to suggest that 'honour' based violence only occurs where love is unrequited. On the contrary, most 'honour' based violence occurs in cultures where marriages are arranged on the basis of social or economic grounds, as here.

c) Failure to give reasons

The Tribunal rejects the Appellant's evidence that she had not told any of her family about her relationship in the UK. She had gone back to Libya twice in 2014 and had not mentioned him, even to a "close female relative". The Tribunal does not believe this evidence. No reasons are given for this finding. I, like the Appellant, have struggled to understand what the reason might be. This is a woman from a conservative culture where marriages arranged by family is the norm, and where, it is accepted, 'honour' based violence occurs. On her evidence her Berber family would not have stood for her marrying an Arab man. It seems to me that in those circumstances the *last* thing she would do would be to go back to Libya on holiday and tell her sister/aunt/mother that she is having a relationship outside the bounds of marriage with an Arab man.

9. Ms Johnstone was quite right to point to the sustainable arguments made in the determination, and the fact that there are arguably a number of discrepancies in the Appellant's evidence. It may well be that in the final analysis she does not discharge the burden of proof. She is however entitled to a disposal of her appeal in which the reasons given are rational, based on the evidence and readily understandable to her. At the heart of this appeal is the claimed relationship in the UK and in order to make findings on this matter, the Tribunal would need to hear evidence from both parties. I have therefore decided, in view of the extent of fact finding required, to remit this matter to the First-tier Tribunal for rehearing.

## Decisions

10. The determination of the First-tier Tribunal contains errors of law and it is set aside.
11. The decision is to be remade in the First-tier Tribunal.
12. Having regard to the nature of the evidence I make the following direction for anonymity, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders.

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”.

Upper Tribunal Judge Bruce  
10<sup>th</sup> May 2016