



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

Appeal Number: AA/05906/2015

THE IMMIGRATION ACTS

**Decision Promulgated
On 25 July 2016**

Before

Upper Tribunal Judge Southern

Between

**M.T.M.A.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C. Johnstone, Senior Home Office Presenting Officer
For the Respondent: Mr M. Schwenk of counsel, instructed by Broudie Jackson
& Cantor, solicitors

DECISION

1. Following a hearing at Stoke on 18 May 2016, by a decision bearing the same date I found that the First-tier Tribunal Judge had made an error of law and set aside his decision other than that to dismiss the appeal on asylum grounds. A copy of that decision is appended to this decision.

2. On 16 June 2016 the following directions were sent to the parties:

MEMORANDUM AND DIRECTIONS

1. The appellant was granted permission to appeal against a decision of First-tier Tribunal Judge Malik who, by a decision promulgated on 22 July 2015, dismissed the appellant's appeal against the decision of the respondent, made on 17 March 2015, to refuse his claims advanced on asylum, humanitarian protection and human rights grounds. Following a hearing before the Upper Tribunal on 18 May 2016 the appeal to the Upper Tribunal was allowed to the extent that the decision of the First-tier Tribunal to dismiss the appeal on humanitarian protection and human rights grounds (article 3 of the ECHR) was set aside to be determined afresh on those grounds only.
 2. It is the appellant's case that there had been a sufficient change in country conditions, as demonstrated by the country evidence now relied upon, such as to warrant, possibly to demand, a departure from the current country guidance in *AT & ors (Article 15c; risk categories) Libya* CG [2014] UKUT 318 (IAC). The appellant's representatives put before the judge a considerable body of country evidence that post-dated *AT & ors* and make clear in the skeleton argument that this material was relied upon to justify a departure from it.
 3. The Upper Tribunal has found that the First-tier Tribunal Judge made a material error of law in failing to engage adequately with the country evidence before him that post-dated the current country guidance.
 4. My provisional view is that the authority of *AT & ors (Article 15c; risk categories) Libya* CG [2014] UKUT 318 (IAC) as country guidance should be removed. It appears to be evidenced that country conditions in Libya at present are sufficiently fluid to establish that it is no longer safe or appropriate to rely upon it as authoritative country guidance. That does not, of course, prevent any party from relying upon material drawn from that judgment. For the purposes of this appeal, there must be a full reconsideration in the light of any country evidence the parties wish to rely upon. No doubt the Tribunal will provide further country guidance on Libya in due course.
 5. Subject to any written representations to the contrary received by the Upper Tribunal no later than 4 pm on 27 June 2016, the Upper Tribunal proposes to remit this appeal to the First-tier Tribunal to be determined afresh by a different judge of that Tribunal. The scope of that hearing is to be as provided for in the Upper Tribunal's decision of 18 May 2016, by which the error of law discussed above was identified.
 6. The parties are on notice that, if the Upper Tribunal proceeds in this manner, its judgment may be considered for reporting, but only in respect of what is said at paragraph 4 above.
3. No such written submissions have been received from either party. Therefore, I now proceed in accordance with those directions to remit this appeal to be determined afresh by the First-tier Tribunal.

Summary of decision:

4. In dismissing the appeal on asylum grounds the judge made no error of law.
5. In dismissing the appeal on humanitarian protection and human rights grounds the judge made an error of law and to that extent only her decision is set aside.
6. The findings of fact made in respect of the appellant's evidence are to stand
7. The appeal to the Upper Tribunal is allowed to the extent that the appeal is remitted to the First-tier Tribunal to be determined afresh (to the extent directed) by a different judge of that Tribunal.

Signed



Date: 21 July 2016

Upper Tribunal Judge Southern

ANNEX



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

Appeal Number: AA/05906/2015

THE IMMIGRATION ACTS

**Heard at Stoke (Bennett House)
On 18 May 2016**

Decision Promulgated

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Before

Upper Tribunal Judge Southern

Between

M.T.M.A.

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C. Johnstone, Senior Home Office Presenting Officer
For the Respondent: Mr M. Schwenk of counsel, instructed by Broudie Jackson
& Cantor, solicitors

ERROR OF LAW DECISION

1. The appellant has been granted permission to appeal against a decision of First-tier Tribunal Judge Malik who, by a decision promulgated on 22 July 2015, dismissed the appellant's appeal against the decision of the respondent, made on 17 March 2015, to refuse his claims advanced on asylum, humanitarian protection and human rights grounds.
2. The appellant is a citizen of Libya who claimed asylum on arrival in the United Kingdom on 6 December 2013. Essentially, there were two main aspects of his claim. First, he said that he was at risk in Libya because he was of the Warfalla tribe loyal to Colonel Gadhafi, his father being a member of the Comrades of the Leader and he had served that group himself. Because of that association he was targeted by the Misrata militia, detained and tortured, being able to leave the prison when it was stormed during an uprising. Having secured medical treatment for his injuries he travelled to the United Kingdom in order to claim asylum. The second strand of his claim was founded upon the risk arising generally for civilians because, he claimed. There was and is in Libya a high level of indiscriminate violence such that there were substantial grounds for believing that he would, simply by being present face a real risk to his life or person.
3. The judge dismissed the appeal because, for the reasons set out in her determination, she did not accept to be true any part of the appellant's account of his experiences in Libya. That was because, although she recognised that the appellant suffered from mental health problems that he said made it difficult for him to concentrate, he had given such a starkly inconsistent and contradictory account of events at the very core of his claim that it was lacking in all credibility that he was giving an account of events that had actually occurred.
4. There is a challenge to that adverse credibility finding in the grounds, developed by Mr Schwenk in his oral submissions. There are two strands to the challenge to the approach taken by the judge to the appellant's credibility and to her approach to the evidence offered of the appellant's health problems. First, it is said that she may have misunderstood the argument being advanced. That is because in her determination she focussed upon the question of whether there was a real risk of infringement of rights protected by article 3 of the ECHR on account of health problems in respect of which the appellant may not be able to access the same level of medical treatment in Libya as was available to him there. But, as Mr Schwenk explained, that was not the submission being advanced. What was being argued was that the health difficulties were relevant for two reasons. First an inability properly to concentrate was relevant to the credibility assessment itself and, second, to the assessment of the 15(c) risk, which was to be informed by the particular

characteristics of the appellant if those were such as to mean that his vulnerability itself enhanced the risk involved. However, although the judge had not been invited to examine the question of whether there was a viable article 3 claim open on health grounds, her conclusion in that respect was not legally incorrect. The judge engaged properly with the nature of the appellant's health difficulties, was plainly fully sighted upon the evidence relied upon and, in concluding that those health difficulties were not such as to explain away the stark nature of the inconsistent and contradictory account that had been given, it is plain that the credibility finding made by the judge was one that was open to her and that this was a reasoned conclusion plainly open to her that discloses no error of law.

5. That leaves the main thrust of the challenge being pursued. The submission advanced before the judge was that there had been a sufficient change in country conditions, as demonstrated by the country evidence now relied upon, such as to warrant, possibly to demand, a departure from the current country guidance in *AT & ors (Article 15c; risk categories) Libya* CG [2014] UKUT 318 (IAC). The appellant's representatives put before the judge a considerable body of country evidence that post dated *AT & ors* and make clear in the skeleton argument that this material was relied upon to justify a departure from it. The material included:

- a. FCO Travel Advice 29/5/2015;
- b. Amnesty International Report 2015;
- c. UNHCR Position paper on Returns to Libya;
- d. UNHCR – New Displacement in east, south and west of Libya;
- e. Voice of America report: “Islamic State Grows Stronger in Libya”;
- f. UK Foreign and Commonwealth Office – Joint Communique 10/6/15;
- g. Foreign and Commonwealth Office: “Country of Concern Libya”;
- h. UNHCR – “Upsurge in Fighting” 16/1/2015
- i. UN News Centre report.

The only reference made by the judge to this body of evidence is found at paragraph 18 of her decision where she said simply this in response to the submission that there was reason to depart from the existing country guidance:

“I have considered the objective evidence in the appellant's bundle to this effect and whilst the situation in Libya appears to be declining, I am not satisfied to the lower standard that this decline is sufficient to depart from the country guidance case...”

2. That can only be regarded as a wholly inadequate basis upon which to reject the appellant's case as it was argued before the judge. On the face of the new country evidence relied upon and put before the judge, there had been, if that evidence were accepted, significant changes in country conditions. Routes of return identified in *AT & ors* were said no longer to be open. Tripoli airport had been closed, as had Benghazi airport. There

were reports of widespread fighting throughout Libya and a deteriorating situation throughout the country. There had been indiscriminate shelling of civilian occupied areas in a number of locations. There was said to be a displacement crisis and a high incidence of violation of human rights in a deteriorating humanitarian situation. The Foreign and Commonwealth Office had spoken of "... the high number of deaths and injuries of civilians as a result of the conflict between armed groups in civilian areas...".

3. Of course, as the judge carried out no assessment of this evidence in her decision we do not know why she rejected it. We do not know if she had correctly engaged with and understood the evidence because there is no discussion of the evidence.
4. For that reason, although the decision to dismiss the appeal on asylum grounds discloses no legal error, the decision to dismiss the appeal on humanitarian protection and human rights grounds cannot stand and will be set aside. To that extent only the appeal to the Upper Tribunal succeeds.

Summary of decision:

5. In dismissing the appeal on asylum grounds the judge made no error of law.
6. In dismissing the appeal on humanitarian protection and human rights grounds the judge made an error of law and to that extent only her decision is set aside.
7. The findings of fact made in respect of the appellant's evidence are to stand
8. The appeal will be listed for the appeal on humanitarian protection and human rights grounds to be determined afresh.

Signed

Date: 18 May 2016



Upper Tribunal Judge Southern