



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

Appeal Number: AA/06508/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 11 April 2016**

**Decision & Reasons Promulgated
On 15 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

[S W]

~~(NO ANONYMITY ORDER MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Warren of Counsel

For the Respondent: Mrs Petterson a Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant is a citizen of Libya born on [] 1994. The respondent notified him on 25 March 2015 of her decision to refuse to grant asylum or ancillary protection, and of her decision requiring him to leave the United Kingdom. His appeal against that decision was dismissed by First-tier Tribunal Judge Buchanan ("the Judge")

following a hearing on 22 May 2015. This is an appeal against that decision.

The Judge's findings

2. The Judge stated [7.4] that the appellant;
“... was in a low profile post of manning security gates along with many others.”
3. The Judge stated [7.9] that;
“I am not persuaded by the appellant that he was incarcerated on a return to Libya in 2013. Neither am I persuaded that his family have gone to ground following a raid to secure the appellant. I am not persuaded that the account of events on an alleged return to Libya from the UK is founded in fact. I do not accept that someone having acted as the appellant claims to have acted as a guard manning security checkpoints would be of interest to the militia in Libya to such an extent that they would monitor calls made to or from the appellant's more (sic) distance family members in Libya.”
4. The Judge stated [10.1] that;
“I am not persuaded by the appellant that the material contained in the (sic) appellants bundle is such as to disclose a materially different level of indiscriminate violence so as to form a real risk to threaten the appellant's life or person.”
5. It is of note that in the Respondents initial refusal letter (25 March 2015) it was accepted that he had played a low level in Gadaffi's forces for 4 months during 2011 [22], he was arrested and released in 2012 as a result of that [27], and he had resided in Tripoli for the majority of his life [33]. It was not accepted he was from the Bani Wallid Tribe [54].

Permission to Appeal

6. First-tier Tribunal Judge Landes granted permission to appeal on 6 August 2015 on the grounds that;
 - “2. It is arguable ... that the judge did not engage adequately with the material placed in front of him and therefore did not provide adequate reasons for his decision at [10.1]. Given the evidence referred to in the grounds which could, on the face of it, indicate that the situation had materially changed so that there was good reason not to follow country guidance it is arguable that the judge should have explained why, despite that evidence, he did not find the situation to have materially changed.
 3. It is also arguable that the judge erred in not addressing the argument put forward by the appellant that there was no safe route of return ...”

The hearing before me on 20 October 2015

7. Mrs Petterson did not challenge the assertion that there was a material error of law as the Judge had not given adequate consideration to the changed situation as set out in the evidence below [12 to 15]. I was satisfied that the making of the decision by the Judge did involve the making of a material error on a point of law given the failure to adequately assess the then up to date background evidence subsequent to the relevant Country Guidance. I set aside the decision.

The Scope of the Disposal hearing

8. I was satisfied that, given the passage of time since the hearing on 22 May 2015, and given the duty to consider the current evidence, the parties should have the opportunity to file further evidence regarding the current situation in Libya and whether or how he could be safely returned, and whether the circumstances meant he could or should be granted asylum or humanitarian protection or protection under Article 3 of the ECHR or not.
9. I therefore directed the filing of further evidence and relisting of the matter. The Respondent ignored the direction to state the route of return. The Appellant filed the directed evidence late.

The Country Guidance

10. AT & Others (Article 15c; risk categories) Libya CG [2014] UKUT was heard between 18 November 2013 and 22 November 2013. That guidance noted;
 - (1) the role of the militias in providing some security,
 - (2) their conflicting interests which often also conflict with that of the central government,
 - (3) the lack of real risk of being subjected to the internal armed conflict solely on account of being in Libya,
 - (4) the lack of real risk of harm just because of having worked for or having had a family member associated with the Gaddafi regime,
 - (5) the lack of real risk of harm just because of having been a failed asylum seeker,
 - (6) the general availability of safe return to Tripoli and Benghazi airports, and
 - (7) the general availability of internal relocation despite the presence of checkpoints,
 - (8) the possibility of internal relocation if it was required due a real risk in their home area particularly if they have tribal affiliation or family links to that home area, and
 - (9) the fact specific nature of each case.

Background evidence since AT

11. Within the background evidence produced are many documents that say similar things in different ways.
12. The poor prison conditions and ill treatment were highlighted by Human Rights Watch (3 December 2015).
13. The United Kingdom Foreign and Commonwealth Office stated (14 May 2015) that they;
“... advise against all travel to Libya due to the ongoing fighting, threat of terrorist attacks and kidnap against foreigners from ISIL extremists, and deteriorating security situation throughout the country.”
14. The International Committee of the Red Cross through their report “Libya: as violence continues, humanitarian needs increase” on 13 April 2015 stated;
“The violence shows no sign of abating. Libya remains a patchwork of conflict, fuelled by a plethora of armed groups with varying allegiances and diverse agendas. Thousands have been killed; hundreds of thousands more have been displaced. The humanitarian situation continues to deteriorate.”
15. The evidence was summarised in the document headed “United Nations News Centre ‘New UN rights report depicts ‘turmoil, lawlessness’ in Libya’ 10 February 2015” which states;
“The report, which will be presented to the UN Human Rights Council in March, depicts a country suffering from increasing turmoil and lawlessness, inflamed by a multitude of competing, heavily armed groups and a broadening political crisis. Against such a backdrop, it calls for bolstering State institutions, urges accountability for rights violations and support for the ongoing political dialogue ...
Indiscriminate artillery and air attacks are commonplace, the report says, while infrastructure, such as hospitals, schools and airports, has been attacked and damaged or used for military purposes ...
Targeted violence, unlawful killings and assassinations, were found to be common, with footage emerging in November that appeared to show several beheadings in Benghazi and Derna.
Cases of harassment, intimidation, torture, abductions, and summary executions of human rights defenders, civil society activists, journalists and other media professionals, as well as members of the judiciary, politicians and law enforcement officers were common and minority groups, including Egyptian Coptic Christians, have also been increasingly targeted ...
Fighting and intentional destruction of residential and commercial property has caused ballooning displacement with

the number of internally displaced persons soaring from 60,000 at the beginning of 2014 to around 400,000 by mid-November.

UN human rights staff report thousands of people in detention, held mostly by armed groups in situations where torture and ill-treatment is rife, with no means of challenging their situation because prosecutors and judges are unable or unwilling to confront the armed groups.

The intimidation and attacks suffered by members of the judiciary, which include court bombings, physical assaults, abduction of individuals or family members and unlawful killings, help explain the hesitancy and the breakdown of the justice system, which does not function in some parts of the country.”

Dr Emile Joffe

16. The Appellant filed a report from Dr Joffe (3 January 2016). He did not give oral evidence. He noted the Appellant’s claimed tribal affiliation of Bani Waleed (although I note that the Judge did not find he was a member of that tribe and the Respondent had rejected that part of his claim), and [14] their marginalisation and being disadvantaged in post-revolutionary Libya following the death of Mu’ammar Gaddafi while in their custody and that their tribal members can anticipate hostility from the major tribal militias on Triploitania.
17. He noted [118] the open borders with Tunisia and Egypt, its accessibility by sea from Malta, the virtual destruction of Tripoli airport (which is closed [135]), the availability of Misurata and Labraq airports, the dispute over control of Benghazi airport (which is closed [135]), the unpredictable security at border points as they are still generally controlled by militia units, and the unpredictable internal checkpoints. There is no safe route of return [134] as the land routes are subject to sudden and unpredictable disruption, and he is not aware of ongoing ferry services from Malta or Tunisia. British airlines do not use Bayda airport [135].
18. He noted [119] the lack of the Libyan states ability to provide adequate protection to its own nationals, and [121] its administrative chaos making duplicates of the family book required to ensure residence and registration unobtainable. He states that [124] relocation is simply not a viable option currently and travel and relocation outside the 2 urban conurbations in the East and West is forbidden and profoundly insecure.
19. He noted [127] the worsening security since November 2013. There is a catastrophe in Benghazi where large parts of the city have been destroyed in fighting over the control of the airport and its environs and air assaults by the UAE and Egypt. In Tripoli tensions have polarised around the Somoud Front and Zintani Militias which periodically erupt into violent clashes, and [128] the coastal road to

Tunisia is insecure and often unstable, Central Libya has become the domain of IS, and there is complete chaos in Fezzan to the south of Tripoli. There are now 2 competing governments. A United Nations inspired mediation collapsed in November 2015 and had been imposed with no certainty it will be accepted. The economic situation is dire [129/130].

20. He opined that [131] the situation has changed so radically that the Country Guidance is no longer an appropriate guide. The Appellant's past activities for the Gaddafi regime in Tripoli and his tribal affiliation mean he would be unable to safely relocate within Libya, and the threat he faces in Tripoli would be amplified by the chaotic situation and personal hostility. It has become a battleground between the forces of Libyan Dignity and Libyan Dawn, with the threat of IS in the background, and [132] the surrounding region is contested by the Misturatan and Zinani militia.
21. Libyan nationals being returned face the danger of arbitrary arrest and detention given the chaotic border controls which are in the hands of the militia groups [133]. Returned asylum seekers who are known supporters of the Gadaffi regime or from a tribe who supported it may face potential interrogation and imprisonment with the possibility of torture and imprisonment that falls far short of international standards [136].

Submissions

22. Mrs Petterson submitted that he can return voluntarily on a transit flight. The facts as found do not indicate he is at real risk from the Libyan Government.
23. Mrs Warren noted that there was still no identified route of return and no response to Dr Joffe's report. Returns had been stopped due to the dangers. The political and state framework had broken down. The situation had changed since AT such as to mean he was entitled to be recognised as a refugee or to humanitarian protection.

Discussion

24. The Appellant was found by the Judge to have had a low profile post of manning security gates along with many others. He was accepted by the Respondent as having lived the majority of his life in Libya, of having been in the Gadaffi army for 4 months in 2011, and of having been detained and released in 2012 due to that. He was not found to have been from the Bani Waleed tribe, or to have lost contact with family, or to have been detained or ill treated on a previous return to Libya. Dr Joffe has made assumptions of facts specific to the Appellant that were not established even to the lower standard.

25. I am not satisfied that given the current background evidence, that the facts as conceded by the Respondent and as found by the Judge bring the Appellant anywhere near the risk categories identified in AT as indicating the Appellant is now entitled to be recognised as a refugee. He was not a former high ranking official within the intelligence service, or associated at a senior level with the regime, or a Black Libyan, or a woman. Given the chaos it is not reasonably likely anyone will have any idea who he is or what his background is, or any real interest in due to his background even if they found out.
26. I therefore dismiss the asylum appeal.
27. The situation in Libya, from both the background evidence and the evidence of Dr Joffe appears to have got worse since AT. There is plainly an internal armed conflict between various factions including government forces. The question for me is whether it is so bad that the mere fact of returning him would place him at a real risk of being a victim of indiscriminate violence (QH and AH (Iraq) v SSHD, UNHCR intervening [2009] EWCA Civ 620). The level of indiscriminate violence has to be very high (HH, AM, J, and MA (Somalia) v SSHD [2010] EWCA Civ 426).
28. The Respondent has not indicated the route of return to Libya despite being directed by me to do so by 11 November 2015. She simply ignored the direction.
29. The Appellant is from Tripoli. He had failed to establish he had any problem after his release from detention in 2012. He has failed to establish any ongoing interest due to his personal circumstances given the embellishment by Dr Joffe of the “facts” as found. There is no evidence the Appellant would be unable to obtain a duplicate of the family book required for residence and registration given his failure to establish a loss of contact with his family. I note that in his asylum interview (29 July 2014) he identified having 4 uncles and 6 aunts in Libya. He would therefore be able, if he could get safely to Tripoli, reside and register as a local citizen. I am not satisfied that the description Dr Joffe gives of the position in Tripoli of the periodic eruption of violent clashes between the Soumoud Front and Zintani militias indicates that the level of indiscriminate violence is very high or that by his mere presence there the Appellant is at a real risk of being a victim of indiscriminate violence.
30. I accept the evidence of Dr Joffe that the Appellant cannot however reach Tripoli by sea or air given the lack of ferries and closure of the airport as I have no reason to doubt it given the background evidence. I also accept his evidence that the land route would be unsafe and has unpredictable security at border points as they are still generally controlled by militia units, and there are unpredictable internal checkpoints even if he was able to get safely to Musrata or Badya airport. That is because the Respondent chose not to file

anything to rebut Dr Joffe's evidence and it accords with the background evidence. I accept the evidence of Dr Joffe that the Appellant cannot reach Benghazi by sea or air or land for the same reasons.

31. I accept the evidence of Dr Joffe that Central Libya is under the control of IS and therefore even if he could get there safely, a requirement to internally relocate there would be wholly improper.
32. I am therefore satisfied that it has been established that no route of return is sufficiently safe to mean that there would be a real risk to the Appellant of him being subjected to harm if he was to be returned currently. I am not satisfied that it is reasonably likely the Appellant would be able to reach the relative safety of his family in Tripoli. I am satisfied that internal relocation would be unduly harsh due to the lack of safety and protection available.
33. I am not therefore satisfied that the Appellant is entitled to humanitarian protection given the findings above [29], but he is entitled to protection pursuant to Article 3 of the 1950 European Convention on Human Rights as he cannot reach the relative safety of Tripoli without there being a real risk of harm in him getting there.

Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error on a point of law.

I set aside the decision.

I remake the decision and dismiss the asylum appeal.

I dismiss the humanitarian protection appeal.

I allow the human rights appeal.

Deputy Upper Tribunal Judge Saffer
14 April 2016