



IAC-AH-CJ-V1

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

Appeal Number: AA/07495/2015

THE IMMIGRATION ACTS

Heard at Manchester

On 25 April 2016

**Decision & Reasons
Promulgated
On 11 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**FM (LIBYA)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Shazia Khan, Counsel instructed by Broudie Jackson
Canter Solicitors

For the Respondent: Mr Geoff Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant from the decision of the First-tier Tribunal (Judge Abigail Hudson sitting at Manchester on 30 July 2015) dismissing his appeal against the decision of the Secretary of State to refuse to recognise him as

a refugee or as being entitled to humanitarian protection under paragraph 339C of the Immigration Rules and/or under Article 15(c) of Council Directive 2004/83/EC ("the Qualification Directive"). The First-tier Tribunal Judge discharged an anonymity direction previously made in the appellant's favour, presumably because she had dismissed his appeal on all grounds raised. However, as he has been granted permission to appeal, I consider that the appellant should be accorded anonymity for these proceedings in the Upper Tribunal.

Relevant Background Facts

2. The appellant is a national of Libya, whose date of birth is [] 1993. He left Libya on 27 September 2013 and flew directly to the UK using his own passport with a Tier 4 Student visa endorsed in it. He arrived in the UK on the same day. He claimed asylum on 20 October 2014, shortly before his student visa expired.
3. His claim was that he had lived in Tripoli prior to leaving Libya. His family was originally from Rajban and they were all members of the Rajban tribe. He volunteered as a clerk in Tripoli for the Ar Rajban military council, which was a military battalion affiliated with the Libyan National Army. He had served in this capacity from February 2012 until May 2012. He had studied in the UK intermittently from July 2012 until October 2014. Whilst in the UK, he had received a phone call from his friend in Libya informing him that militias opposed to the Libyan National Army had taken over Tripoli. They had confiscated the files of the employees of former government offices and military battalions, including the Ar Rajban battalion. His family had fled Tripoli in September 2014 and had returned to their home area of Rajban. He had maintained contact with them since being in the UK, and he reported that they had encountered no problems living in Rajban.
4. At question 67 of his asylum interview, the appellant was asked who was in control of Rajban. He answered that the army was in control, but there was a war going on in the surrounding area. In the western mountain area there were seven cities. There were two cities like Zintan and Rajban which were united, and the other five cities belonged to the opposition.
5. At Q & A 69, the appellant confirmed that he could not join his family in the city of Rajban (two hours' driving distance from Tripoli) due to the surrounding conflict.
6. In the subsequent decision letter, it was accepted by the respondent that he had volunteered as a typing clerk for the Ar Rajban military council and that he was from Rajban. It was not accepted he had a genuine subjective fear on return to Libya, having regard to the case law of **AT and Others (Article 15c; risk categories) CG [2014] UKUT 318 (IAC)** which was promulgated on 14 July 2014. This case held that there was not such a high level of indiscriminate violence in Libya, within the meaning of Article 15(c) of the Qualification Directive so as to mean that substantial grounds

exist for believing that an individual would, solely by being present there, face a real risk which threatens his or her life or person.

7. With regard to his asylum claim, he did not fall with any of the groups who were at real risk of persecution or Article 3 ill-treatment on return to Libya, having regard to the generally hostile attitude of society to the former regime. So according to **AT** case law, his position of volunteering for five months as a clerk did not put him at risk because he was not closely linked with the Gaddafi regime. In addition to this, even if it was accepted he was at risk in Tripoli, which it was not, there was an area of Libya to which he could reasonably locate where he would not face a real risk of harm.
8. Paragraph 3990 of the Immigration Rules provided that a grant of asylum would not be made if there was a part of the country of origin where the person would not have a well-founded fear of being persecuted, and that person could reasonably be expected to stay in that part of the country. According to Q & A 12, the only part of Libya that he feared returning to was Tripoli. Libya had a landmass of 1.77 million square kilometres, and a population of 6.4 million people. He stated it would not be safe to travel to Rajban, but it was reasonable to expect him to relocate there having regard to the guidance given in **AT** on internal relocation:

“(19) For persons who have established a real risk of proscribed ill-treatment in their home area for a reason other than by reference to one of the categories set out above, for example because of a family or tribal feud, or because of hostility from a particular militia, it is possible to be able to safely travel from one part of Libya to another, depending on whether the reason for the risk is one that would give rise to a further risk for that same reason, on encountering a checkpoint.

(20) A male seeking to avoid a local risk of harm such as described in (19) above, would be able in practical terms to relocate to another area of Libya, be it for example Tripoli or Benghazi, particularly if the person has tribal or family connections there. The absence of such connections would not prevent the person from establishing himself, in the sense of being able to live in the new community and find accommodation. It would not be unduly harsh for such a person to relocate internally.

(21) However, such a person may not be able to avoid a risk of harm in a new area where the person has no connections in terms of tribal or family links, but the person or group that is feared does have such links. A fact-specific enquiry is essential. An appellant’s assertion that the individual or group that is feared has links to say, Tripoli or Benghazi, or another prospective place of relocation, will need to be assessed in the light of the findings in relation to overall credibility.”

9. So according to case law it was possible to travel safely to other areas within Libya for the purposes of relocation. Furthermore, he stated his family had already relocated to Rajban, which further indicated it was possible for him to do so as well.

The Hearing Before, and the Decision of, the First-tier Tribunal

10. At the hearing before Judge Hudson, the appellant gave oral evidence. He adopted as his evidence-in-chief his witness statement in which he continued to insist that it was too dangerous for him to return to Libya. He believed the militias were now in control and they would identify him as a member of the Rajban tribe and they would be aware that he had volunteered for his battalion. This would put him at risk of serious harm. There were two governments now. The one in Tobruk had control over the army, and the one in Tripoli had control over the militias. Both sides were targeting civilians in the conflict. It was not safe for him to return to Libya due to the ongoing armed conflict. Any travel around Libya was not safe. The only point of entry to Libya was Tripoli. It was no longer safe to cross the border from Tunisia. If he flew into Tripoli, he would be immediately at risk. But in any event he would need to find a way to travel to Rajban. Although his family had not had any problems yet, there was fighting going on all around Rajban, which was very close to Zintan, a city which was also actively supporting the army. The cities of Rajban and Zintan were fighting neighbouring towns which supported Libya Dawn, "and this could erupt at any time". The situation was not stable. The only reason his family were still in Rajban was because they had nowhere else to go and it would be too dangerous to move.
11. The appellant's bundle contained an interim operational instruction issued by the Foreign and Commonwealth Office advising against all travel to Libya due to the ongoing fighting and greater instability throughout the country. All escorted returns to Libya should therefore be deferred at the present time. The Foreign Office explained that fighting had commenced in Tripoli in July 2014 and had since spread to other areas of Libya. As a result Tripoli Airport closed in July 2014 and remained closed. Baida, Tobruk, Misrata and Benghazi airports were open. They were unable to conduct escorted returns to these airports, but individuals might return to them voluntarily.
12. A more recent interim operational instruction dated 11 February 2015 was handed up. This instruction replaced the earlier one. The Foreign and Commonwealth Office continued to advise against all travel to Libya. However, individuals that wished to return to Libya voluntarily might still do so. A small number of airports in Libya remained open. Although there were no direct flights in the UK, there were transit flight options via Tunisia. Individuals might also travel overland from Tunisia.
13. The appellant's bundle was mainly taken up with an extensive number of reports about the deteriorating situation in Libya. These reports were generated between November 2014 and the beginning of July 2015.

14. In an overview dated 30 March 2015 issued by the Norwegian Refugee Council (“NRC”), they characterised 2014 as being a year in which there had been a failed transition and a splintering of Libya. While generally portrayed as a confrontation between Islamists (Libya Dawn) and anti-Islamists (Operation Dignity), fighting involved a complex set of motives, including tribal and ethnic identities, power and security. Internal fighting erupted against the backdrop of an inherently weak state in an emerging security vacuum. There were serious regional repercussions as Libya has become a base for radical groups such as Al Qaeda in the Islamic Maghreb and the Islamic State. In the summer of 2014, fighting in Tripoli and other areas of the country, characterised by the indiscriminate use of heavy weaponry in densely populated areas by all protagonists, led to the displacement of hundreds of thousands of people within and around the capital, as well as Benghazi. For instance, militias from Misrata and Zintan fought over the Tripoli airport in July and August 2014. Most of those affected by the conflict were in the west, but 6,000 civilians were displaced in Benghazi in the east. Following the takeover of Tripoli by Libya Dawn, the Government left Tripoli and moved to the town of Al-Baida.
15. In a section on Displacement Figures, the NRC said that since mid-May 2014, at least 269,000 have been displaced in the west, and 90,000 in the east, by fighting between various armed groups that started in Benghazi in mid-May and in Tripoli in mid-July 2014 before extending to the whole country.
16. On the topic of Patterns of Displacement, the NRC reported that 269,000 IDPs had sought refuge in the country’s western region, according to the UNHCR. Most of the IDPs who fled fighting in Tripoli principally sought refuge in the towns of al-Zawiya, Ajaylat and Yafran in the west.
17. In an address to the International Criminal Court on 12 May 2015, the speaker said that his office continued to be concerned about alleged indiscriminate attacks in heavily populated areas by both Libya Dawn and Operation Dignity forces, resulting in civilian casualties, in particular in Benghazi, Tripoli, Warshefana, and in the Nafusa Mountains.
18. In her subsequent decision, the judge set out her findings at paragraph [12] onwards. At paragraph [19], the judge reached the following conclusion on the appellant’s asylum claim:

“In the light of the vague and unsubstantiated assertions proffered by [FM] through Mohammed in Libya, I am not satisfied that any militia has a list with [FM’s] name on it. I am not satisfied that two colleagues described disappeared, nor that they disappeared through any connection to the Ar-Rajban military council. I find that no militia or other military group is looking for [FM] or his family.”
19. The judge turned to consider the general situation in Libya. At paragraph [22] she held that, given her finding that FM did not fall into any specific risk category, there was nothing preventing his return to Libya. She

referred to the country guidance in **AT** which said that notwithstanding the prevalence of checkpoints manned by militias, it was possible to travel overland from Tripoli Airport to other destinations without a real risk of persecution, serious harm or Article 3 ill-treatment. The evidence did not reveal such a level of arbitrary or irrational conduct on the part of militias at checkpoints such as to put the ordinary traveller at real risk. She referred to the guidance given in paragraphs 19 and 20 of the headnote, and to the interim operational instruction of 11 February 2015 confirming that other airports apart from Tripoli remained open, and were accessible via Tunisia. At paragraph [26], she directed herself that the country guidance case was authoritative in any subsequent appeal, insofar as that appeal (a) relates to the country guidance issue in question, and (b) depends upon the same or similar evidence. The judge continued:

“28. I accept that the human rights situation in Libya deteriorated from mid-2014 and acknowledge that AT was heard in November 2013. However, the Upper Tribunal were mindful of the potential for events in Libya post-hearing to affect their assessment of the issues and indicated that the parties may invite the Tribunal to reconvene if relevant events needed to be brought to their attention. None of the parties contacted the Tribunal or sought to draw their attention to any specific events (paragraph 5 **AT**).

29. I further accept that the ongoing conflict between armed groups continues to severely impact the civilian population, many of whom have been targeted or displaced due to political, tribal and regional divides. However I am not satisfied that there is credible fresh evidence relevant to the specific issues in this case. Nothing in the country information provided to me gives credible evidence that [FM] would be particularly at risk due to a brief period of low level voluntary work in 2012, or that he would be particularly at risk in travelling overland or relocating.

30. I find that [FM] would be at no risk of persecution within Tripoli, but in any event could relocate to Ar Rajban. His family reside there and have not had any problems resulting from his perceived support of any particular political opinion. Given the country guidance in relation to internal travel, there would be no risk to [FM] in travelling to Ar Rajban once within Libya.”

20. Ms Khan settled an application for permission to appeal on behalf of the appellant. Ground 1 was that Judge Hudson had failed to assess the risk to the appellant as a result of his political affiliation. Ground 2 was that the judge had erred in law in the way she had assessed the appellant’s claim under Article 15(c) of the Qualification Directive.

The Initial Refusal of Permission

21. On 3 September 2015 Judge Mailer refused permission to appeal for the following reasons:

- “2. The grounds assert that the Judge failed to assess his risk on return to Tripoli because of his political affiliations. Further, she failed to engage with the appellant’s arguments and the background information that the situation has deteriorated since AT. Her finding that there was not anything in his background to give rise to a particular risk was flawed as she failed to have regard to the considerable background evidence showing a risk to the appellant as a result of high levels of indiscriminate violence. She also failed to have regard to an appeal ‘where the argument succeeded’.
3. However, the judge noted at the outset that she had considered all the evidence including the ‘various country evidence’ [9(c)]. She also accepted that the human rights situation in Libya deteriorated from mid-2014 [28]. None of the parties had invited the Upper Tribunal to reconvene or sought to draw their attention to any specific events – [AT] [5]. She had express regard to the current country information provided but concluded that there was no credible fresh evidence showing that he would be at risk of returned [29] [30].
4. The Judge has given a detailed assessment of the evidence as a whole and has given cogent and sustainable reasons on the available evidence for concluding that he would not be at risk of persecution on return. The grounds amount to a disagreement with the findings which are sustainable.”

The Eventual Grant of Permission

22. Upon a renewed application for permission to appeal to the Upper Tribunal, Upper Tribunal Judge Reeds granted permission to appeal on 14 October 2015 for the following reasons:

“It is arguable that the judge erred in the assessment of Article 15(c) by only considering the particular circumstances of the Appellant when there was evidence in the form of country materials of a recent origin relied upon by the applicant to demonstrate that there was a risk to the Appellant as a result of the high level of indiscriminate violence. Whilst the judge made reference at [28] to the situation in Libya deteriorating, it was incumbent on the judge to consider and make an assessment of the country material postdating the country guidance decision and that produced by the parties to make an assessment of the Article 15(c) issue. I grant permission on all grounds.”

The Rule 24 Response

23. On 3 November 2015 Mr Tufan of the Specialist Appeals Team settled the Rule 24 response opposing the appeal. In summary, he submitted that the Judge of the First-tier Tribunal directed herself appropriately. She had followed the Practice Directions with reference to country guidance cases. It was clear from her decision that Judge Hudson had considered the evidence adduced by the appellant, and had clearly found that the fresh evidence did not demonstrate that the appellant would be at risk on return. She would have erred in law if she had not followed the country guidance case, and there were no material errors of law in the decision.

The Error of Law Hearing in the Upper Tribunal

24. At the hearing before me to determine whether an error of law was made out, Ms Khan referred me to a decision of Judge Cruthers sitting in the First-tier Tribunal at Manchester on 13 May 2015 in which he held that in his assessment the country evidence clearly established the state of internal armed conflict in Libya, and also established that currently the test for an appellant to succeed by reference to Article 15(c) was met. He did not think it realistic to single out Tobruk (the only point of return argued for by the Presenting Officer) as a place where the risk did not reach the level required for a claim pursuant to Article 15(c) to succeed. He went on to give extensive citations from what Ms Khan assured me was precisely the same compilation of reports which had been relied on in this appeal (although on reflection this cannot be entirely correct, as the reports in this appeal run up until 2 July 2015, whereas the hearing before Judge Cruthers took place on 13 May 2015).
25. Ms Khan relied on the decision of Judge Cruthers as highlighting the inadequacy of Judge Hudson's assessment of the background evidence. She proceeded to draw my attention to various passages in the reports, which she submitted showed that the appellant should have succeeded in his claim under Article 15(c) of the Qualification Directive, or which at least showed that the judge had not given adequate reasons for finding to the contrary. She also submitted there was a clear error of law in the judge's finding that the appellant did not qualify for recognition as a refugee. In reply, Mr Harrison adhered to the Rule 24 response which had been settled by his colleague, Mr Tufan.

Discussion

26. Ground 1 is that the judge failed to give adequate reasons for finding that the appellant would not be at risk of persecution within Tripoli given the acceptance that he is a member of the Rajban tribe and the fact that his family relocated from Tripoli to Rajban following the ousting of the government in Tripoli which their tribe supported.
27. The appellant's core claim was that the militia which had taken over Tripoli had identified him as someone who had worked for the Ar Rajban military council, albeit briefly and in a civilian capacity, and that he faced persecution from such militia if he was picked up by them in Tripoli.
28. I consider that the judge gave adequate reasons for finding he was not credible in his account of having come to the attention of the militia as a former participant in the Rajban military council, and hence that he would not be perceived by the militia as having an adverse political profile. It was not part of the appellant's case that his family had been at risk in Tripoli merely because they were members of the Rajban tribe which had supported the former government in Tripoli. There was also no indication from the background evidence which was relied on before the First-tier Tribunal that such persecution had taken place. The relocation of the

appellant's family from Tripoli to their home area of Rajban is entirely consistent with the family fleeing a situation of internal armed conflict which had erupted in Tripoli. It does not mean that family members of the appellant had a well-founded fear of persecution in Tripoli, anymore than did the appellant himself.

29. The other way in which Ms Khan put her case under ground 1 was that the judge had not taken into account the risk that the appellant would face if he encountered a checkpoint on his journey to Rajban which was manned by militia who were hostile to the Rajban tribe.
30. I consider that the judge gave adequate reasons for finding that there was not a real risk of the appellant suffering persecution, or ill-treatment of such severity as to cross the threshold of Article 3 ECHR, when making his way to Rajban. If the Libya Dawn militia in Tripoli were not going to target the appellant on account of his political or tribal profile, there was no reason to suppose that the appellant would be targeted on this account by Libya Dawn militia if he happened to encounter such militia at a checkpoint en route to his tribal home area. It was open to the judge to adhere to the country guidance given in **AT** about the relative ease for single adult males of relocating from one area in Libya to another, despite the general deterioration in the security situation which is highlighted in the background evidence relied on before the First-tier Tribunal. Libya Dawn had seized complete control of Tripoli on 24 August 2014. In September 2014 the appellant's family safely made their way out of Tripoli, and travelled to Rajban. They did so despite having to pass through and out of an area controlled by Libya Dawn.
31. Turning to ground 2, Ms Khan and Mr Harrison agreed with my proposition that the same principle which underlies paragraph 3390 of the Immigration Rules also applies to Article 15(c) of the Qualification Directive. The background evidence relied on before the First-tier Tribunal clearly establishes that in the one year period leading up to the date of the hearing there had been, and probably continued to be, certain areas within Libya where there was such a high level of indiscriminate violence that substantial grounds existed for believing that an individual would, solely by being present there, face a real risk which threatened his or her life or person. The appellant accepted this was not true of Rajban, where other members of his family had relocated, so the issue which the judge had to resolve was whether, absent a risk of persecution or Article 3(c) harm, the appellant was nonetheless eligible for protection under Article 15(c).
32. I consider it was open to the judge to find that he was not eligible for such protection, and I do not consider that the judge materially erred in law in not engaging in detail with the background evidence in order to support her conclusion. The burden rested with the appellant to show that he could not relocate to the safe haven of Rajban from his hypothetical point of entry to the country (hypothetical because he was not, and is not, facing an enforced return). The burden was on him to show that whatever

hypothetical point of entry might be available to him he could not reach the safe haven of Rajban without passing through one or more areas where the level of indiscriminate violence was so high that he would be at risk merely by being present in such a region as he passed through it. The appellant did not identify any background evidence which supported his claim that there was fighting all around Rajban, and generally no attempt was made to demonstrate by reference to a map of Libya that there was no safe corridor through which the appellant could travel overland to Rajban from a suitable entry point.

33. But even if the judge erred in not engaging in detail with the background evidence, I find that the error is not material for a reason which relates back to paragraph 3390. On any view there are and were other places of relative safety in Libya to which the appellant could relocate *without having to travel overland*. Given his tribe's loyalty to the Government which relocated to al-Baida, it was neither unreasonable nor unduly harsh for him to relocate by means of a direct flight from Tunisia to a town or city loyal to the Government where there was not any fighting, such as al-Baida or Tobruk.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him 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 contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Monson