



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

Appeal Number: AA079152015

THE IMMIGRATION ACTS

**Heard at: Stoke-on-Trent
On: 17th May 2016**

**Decision Promulgated
On: 25th May 2016**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

AMS

(anonymity direction made)

Respondent

For the Appellant: Mr McVeety, Senior Home Office Presenting Officer

For the Respondent: Ms Mensah, Counsel instructed by AJO Solicitors

DECISION AND REASONS

1. The Respondent is a national of Libya born in 1981. On the 24th August 2015 the First-tier Tribunal (Judge Lambert) allowed his appeal against a decision of the Secretary of State to reject his protection claim. The Secretary of State now has permission to appeal against that decision¹.

¹ Permission to appeal was granted by First-tier Tribunal Judge Grimmatt on the 29th September 2015

2. The basis of the Respondent's protection claim was that he was being directly threatened by the militia known as 'Libya Dawn' and the self styled 'Tripoli Military Council'. The reason for their threats was a) his association with the previous regime and with Saif al-Islam Gaddafi in particular and b) his high profile role within a US-UK sponsored human rights initiative.
3. The Secretary of State did not accept that the Respondent was at risk for any of the reasons claimed. On appeal the First-tier Tribunal had disagreed. Having had regard to the oral testimony of the Respondent and the extensive documentary evidence Judge Lambert made the following findings of fact:
 - The Respondent had been the organiser of 'Tomorrow Libya' and a youth organisation known as 'National Libyan Youth Organisation'. There was only one person above him in the hierarchy, and that was Saif Gaddafi [9.5]
 - There were therefore very substantial grounds for believing that he worked in a position amounting to association at a senior level with the Gaddafi regime [9.6]
 - This places him in a risk category in accordance with the guidance in AT and Ors [2014] UKUT 00318 (IAC)
 - He had a public profile as a journalist and editor connected with his work for the 'Peaceful Change' initiative [9.9] and human rights activity [9.13]
 - He worked for three years for the General National Council (GNC) [9.12]
 - He attended an anti-militia protest in November 2013 [9.13]
 - Three arrest warrants issued against him are found to be credible [9.10]
 - These facts cumulatively lead to a finding that he would be "at very significant risk" in NSG/Libyan Dawn controlled Tripoli
 - Internal flight was not argued by the Secretary of State and nothing before the Judge indicated that the risk would be limited to only certain parts of Libya

The appeal was thereby allowed on asylum and human rights grounds.

4. The Secretary of State appeals on two grounds. First, it is contended that the First-tier Tribunal misapprehended the country background situation. The Secretary of State contends that the groups alleged to be threatening the Appellant are in fact aligned with his former

employers the GNC. In those circumstances the finding of risk cannot stand. Secondly, complaint is made that the Tribunal failed to take account of, or properly apply, the guidance in AT to the effect that many Libyans had some association with the Gaddafi regime but that the vast majority are not at risk today.

Findings on ‘Error of Law’

Ground (ii): Association with Gaddafi

5. I deal with the second ground first. There is no merit in it. The determination expressly recognises the guidance in AT. The First-tier Tribunal had an abundance of evidence before it which led it to find the Respondent to be a wholly credible witness. It expressly accepted that he had been involved, *inter alia*, at a high level in an organisation fronted by Saif al-Islam Gaddafi. He had known him personally and there was no one between them in the chain of command. That led to the conclusion that this was a man who was, or would be perceived to be, involved at a senior level in the Gaddafi regime. His case was therefore distinguished on its facts from the generality of Libyans who may at one time or another have been employees of the government. That finding was open to the Tribunal on the evidence that was before it and I see no reason to interfere with it.

Ground (i): The Country Situation

6. The first ground led Ms Mensah to conduct an impressive and erudite synopsis of the recent and troubled history of Libya. Mr McVeety maintained that the Judge had got it wrong, and that she had misunderstood who was in control of Tripoli and how that might affect the risk assessment. The respective positions of the First-tier Tribunal and the parties, insofar as I understood it, can be summarised as follows.
7. The Tribunal noted the Respondent’s claim that he had, between 2011 and 2013 been employed by the Interim Government in the Department of Education. The Secretary of State had, in rejecting the protection claim, stated that there would be no risk from ‘Libya Dawn’ because they were affiliated with the very same organisation. The reasons for refusal letter reads: “given that you claim to have worked for the government for three years, it is considered inconsistent that you are now a target for pro-government militias”. Of this the Tribunal found:

“9.7 The [Secretary of State] concedes that there is ‘overwhelming evidence’ of his employment with what the

author of the refusal describes as the 'current government'. There is, as emphasised by Mr Madubike, a fatal error here by the author of the letter, who appears entirely to have overlooked events in Libya in 2014 leading to the overthrow - at least in Tripoli - of the Interim Government with whom the Appellant was employed. That has now become the rival government, based in Tobruk. The authority in control of Tripoli has since August 2014 been the self-declared National Salvation Government (NSG) with its military arm the Misrata-led Libyan Dawn Alliance (Human Rights Watch report 2015, Appellant p.30, Amnesty International p.40). There is therefore no inconsistency at all between the Appellant's employment record from 2011 with the internationally recognised Interim General Congress (GNC) (now based in Tobruk) and his claim now to be a target of the Militia run government in Tripoli."

8. The Secretary of State's grounds of appeal rely on the UNHCRs Position on Returns to Libya of November 2014:

*"In February 2014, protests erupted when the parliament, the General National Congress (GNC) cited the need for drafting a new constitution and extended its mandate beyond 7 February 2014. On 16 May 2014, the situation further deteriorated when a former General, Khalifa Haftar, launched a military offensive against armed groups in Benghazi . Two days later, armed groups allied with former General Haftar stormed the parliament building in Tripoli accusing the then-elected Prime Minister Ahmed Maiteeq of supporting Islamist groups. **A new parliament, the House of Representatives, was elected in June.** The security situation continued to deteriorate...*

*In August 2014, the political crisis escalated further, **when the House of Representatives moved to Tobruk** while a number of its members boycotted its proceedings and **the GNC reconvened in Tripoli.** The House of Representatives reappointed Abdullah Al Thinni as Prime Minister, while the GNC appointed Omar Al Hassi as Prime Minister, effectively leaving the country with two governments."*

(emphasis in original)

On the basis of this information, the Secretary of State concludes that it was the House of Representatives who went to Tobruk, leaving the GNC in charge in Tripoli. Since the GNC were the government that the Respondent had worked for, he cannot rationally be thought to be at risk in the city today.

9. Ms Mensah submitted that the First-tier Tribunal had (in substance) got it right, and that it was the Secretary of State who had got it wrong. The confusion arose simply because of the various names used by the different groupings, and no doubt their transliteration into English from Arabic. For instance, it would appear that the Tribunal has used the term 'interim' where other sources use 'transitional'. Further confusion arises from the fact that in the chaos that has characterised post-Gaddafi Libya, there have been frequent, and sometimes swift, changes in allegiance. For instance, Islamists who had previously stood in opposition to any of the recognised governments subsequently formed the 'new' GNC which aligned itself with the National Salvation Council.
10. With those points in mind I find as follows.
11. Between the summer of 2011 and August 2012 the government in Tripoli, recognised by the international community, was known as the National Transitional Council. In July 2012 an alliance known as the General National Congress was elected; it assumed office in August. These were the organisations in government during the period that the Respondent was working as a civil servant. Both were plagued by internal division. Although recognised as the official government by the US and UK, it became apparent that the GNC was riven by a power struggle in which Islamist factions were increasingly dominant.
12. In March 2013 the GNC replaced itself with a new 'House of Representatives'. The group were due to stand down in January 2014 but refused to do so, extending their mandate for a further year. This led to unrest and in May 2014 the Libyan Army, under the command of General Haftar, attempted an assault on what it perceived to be Islamist influence by attacking the parliament building in Tripoli. This attack failed and in June further elections were held. A group identified as the 'Council of Deputies' was elected. They were recognised by the international community but the turnout was low. This led to protest by pro-Islamist factions that the election was a nullity, a fix, or both. Violence escalated until in July 2014 the Council of Deputies was forced to move to Tobruk, where it remains. I am satisfied that this is the rump of the organisation that the Respondent had previously worked for. To that extent the First-tier Tribunal was quite correct in finding that his erstwhile employers are no longer in charge in Tripoli. It may be that the UNHCR have confused matters by referring to this organisation as the 'House of Representatives' but I am satisfied that in this context they are both the same thing. The group that took over Tripoli in 2014 are hardline Islamists. They are known variously as the National Salvation Government, the ('new') GNC or in some sources as the Misrati government (the militias that back it having their strongholds in Misrata). These groups are backed by Libya Dawn who are the

organisation which has threatened the Respondent. I am satisfied that the First-tier Tribunal understood this to be the situation and it was on that basis that the risk assessment was made. The second ground is not therefore made out.

13. I would add this. Ms Mensah recognised that it may be that certain individuals and militias have changed allegiances over the course of the five year long civil war in Libya (I see no rationale for separating the conflict into two distinct wars). The fact is that the Respondent was a civil servant doing his job. Whether or not individuals or certain militias sought him out then, or declared him to be 'safe' is not the point. The point is that there is a finding of fact that a ruthless Islamist militia known as Libya Dawn have now issued threats against him, for reasons of his imputed political opinion. Whether or not the Respondent once worked under the political control of individuals who may or may not today be aligned with that group is frankly immaterial. In the context of this conflict it is unlikely in the extreme that any protection will be available to the Respondent to protect himself against Libya Dawn or the Tripoli Military Council.

Decisions

14. The determination of the First-tier Tribunal contains no error of law and it is upheld.
15. 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 Respondent is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Respondent and the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings”.

Upper Tribunal Judge Bruce
23rd May

2016