



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: PA008372015  
AA116302015

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 13<sup>th</sup> May 2016

Decision & Reasons Promulgated  
On 24<sup>th</sup> May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

[A S] (FIRST APPELLANT)  
[R A] (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr K J Wood of Rochdale Law Centre  
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellants appeal against a decision of Judge O R Williams of the First-tier Tribunal (the FTT) promulgated on 24<sup>th</sup> February 2016.

2. The Appellants are Libyan citizens. They have three dependant children.
3. The First Appellant resided in the United Kingdom as a Tier 4 Student with a visa valid between 7<sup>th</sup> June 2014 and 16<sup>th</sup> March 2015. The Second Appellant and the children had leave for the same period as his dependants.
4. The Second Appellant claimed asylum on 19<sup>th</sup> February 2015, and the First Appellant claimed on 4<sup>th</sup> June 2015.
5. The applications were refused on 7<sup>th</sup> August 2015, and the appeals were heard by the FTT on 11<sup>th</sup> February 2016. The FTT heard evidence from the Appellants and found them not credible, and the appeals were dismissed on all grounds.
6. The Appellants applied for permission to appeal to the Upper Tribunal relying upon five grounds which are summarised below.

#### Ground 1

7. The FTT made a material misdirection in law by failing to consider any background country evidence, and failing to engage with an expert report prepared by Dr George.

#### Ground 2

8. The FTT erred in law by failing to adopt the correct approach to evaluating the reliability of documentary evidence. Dr George commented in his report that although he had only been provided with photographs of documents, there was nothing obvious about the documents that would cause him to doubt their authenticity.

#### Ground 3

9. The FTT made an irrational finding of fact by rejecting a letter from the local council as it had been drafted upon self-serving information passed on by a relative of the Appellants. It was contended that in oral evidence before the FTT the Appellants confirmed that they had not told the council what to write about the damage to their property in Libya.

#### Ground 4

10. The FTT erred by permitting a procedural unfairness. The FTT allowed the Respondent's representative at the hearing to produce a document indicating that flights to Tobruk Airport were available. It had not been suggested in the Respondent's refusal letter that the Appellants could relocate to Tobruk. The Appellant's representative objected to the introduction of this evidence, and contended that the FTT in allowing the evidence to be admitted, caused a procedural unfairness which operated to the detriment of the Appellant.

## Ground 5

11. The FTT erred in law by applying the wrong standard of proof, by making reference to the phrase “reasonably likely.”
12. Permission to appeal was granted by Judge J M Holmes who found arguable merit in Grounds 1 and 5, and commented that all grounds may be argued “although there appears to be considerably less merit in the other grounds.”
13. Following the grant of permission the Respondent lodged a written response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 contending in summary that the FTT had not erred in law. It was not accepted that the FTT had applied an incorrect standard of proof, and it was contended that the FTT had provided adequate reasons for finding that the witnesses were not consistent and that there were significant discrepancies in their evidence.
14. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FTT decision contained an error of law such that it should be set aside.

## Oral Submissions

15. Mr Wood relied and expanded upon the grounds contained within the application for permission to appeal. However Mr Wood did accept that no background evidence had been submitted to the FTT, and therefore it could not be fairly submitted that the FTT had erred by failing to consider background evidence that was not before it. In relation to Ground 1, Mr Wood contended that the FTT had erred by failing to engage with Dr George’s report, and failing to give adequate reasons for rejecting the conclusion reached by Dr George.
16. Mr McVeety pointed out that Dr George had acknowledged in his report that his role was not to assess credibility and that had to be decided by the FTT.
17. Mr McVeety submitted that the FTT was entitled to reject the evidence given by the Appellants, because of inconsistency and vagueness. The FTT had noted that the First Appellant had travelled back to Libya which did not indicate that he genuinely felt at risk.
18. In relation to the standard of proof, Mr McVeety submitted that this had been correctly set out by the FTT at paragraphs 5 and 7 and the decision did not demonstrate that the FTT had applied too high a standard of proof. Mr McVeety submitted that the decision should not be set aside.

19. At the conclusion of oral submissions I reserved my decision.

## **My Conclusions and Reasons**

### Ground 1

20. As it is now accepted that there was no background evidence presented to the FTT, I find that the FTT did not err in failing to consider background evidence. It is not the function of the FTT to carry out research into background evidence after the hearing has concluded.
21. I do not accept that the FTT failed to engage with a report prepared by Dr George, in which it is stated that Dr George finds the Appellants' account plausible. Dr George at paragraph 113 of his report correctly notes that the determination of credibility is to be decided by the Tribunal.
22. The FTT makes specific reference to Dr George's report at paragraphs 20 and 27, and at paragraph 20 sets out part of the report. The FTT records that the report supports the credibility of the Appellants' account.
23. It is evident from reading the FTT decision that the FTT had regard to the report but was aware that decisions regarding credibility had to be made by the FTT and not the expert. I find that the FTT did engage with the report, and gave sustainable reasons in paragraphs 23-26 for not accepting that the Appellants would be at risk if returned to Libya.

### Ground 2

24. I do not find that the FTT erred in assessment of documentary evidence. Dr George in his report at paragraph 31 refers to photographs purporting to show the Appellants' house in Tripoli, damaged by gunshots, and photographs of a series of documents. Dr George states that assessment of the likely authenticity of documents based only on photocopies can only be provisional, the original documents would be needed before confident opinions about document authenticity could be made. Dr George comments that there was nothing obvious about the documents that would cause him to doubt their authenticity.
25. I do not find that the FTT concluded that the photographs could not be relied upon, and has not made a finding that documents proving ownership cannot be relied upon. The FTT at paragraph 26 does not dispute that the property shown in the photographs has been damaged by gunfire, but concludes that this was caused by a random act of violence, rather than an attack directed at the Appellant. I do not find any merit in this ground.

### Ground 3

26. It is contended that the FTT made an irrational finding of fact in considering a letter from the council in Tripoli contained within the Appellants' bundle at page 90. This is a translation of a letter which confirms that the First Appellant's property was subject to an armed attack which resulted in the destruction of its contents and façade following the threats that the Second Appellant received "last November as a result of a political disagreement with an armed group." The FTT found at paragraph 26 that this letter had been drafted based upon self-serving information passed on by a relative and therefore attached little weight.
27. In my view it was open to the FTT to reach that conclusion. The FTT was not doubting ownership of the property or that there had been an attack upon it. It was open to the FTT to find that the author of the letter, writing on behalf of the city council, received information on behalf of the Appellants that threats had been made in November as a result of a political disagreement with an armed group. That finding was open to the FTT to make and does not disclose a material error of law.

### Ground 4

28. I do not find the FTT erred by permitting a procedural unfairness. The FTT admitted into evidence a document submitted on behalf of the Respondent at the hearing, indicating that it was possible to obtain flights to Tobruk Airport. This is not material, as the primary finding of the FTT at paragraph 32 was that the Appellants could return to Tripoli where they had lived the majority of their lives, or Benghazi. It is correct that at paragraph 34 the FTT also found that the Appellants could travel to Tobruk, and it had been no part of the Respondent's initial refusal that this was possible.
29. The FTT must consider the circumstances appertaining at the date of the hearing, and therefore was entitled to consider new evidence. It was open to the Appellants' representative to apply for an adjournment if taken by surprise or disadvantage by new evidence. No such application was made. I do not find that this ground discloses an error of law.

### Ground 5

30. In my view it is not helpful for the FTT to make reference to "reasonably likely," as it is not clear, exactly what this means. What is clear, is that when considering an asylum appeal, the standard of proof is lower than the normal civil standard which is a balance of probabilities. An appropriate description could be that the standard of proof is based upon a reasonable degree of likelihood.
31. Having carefully considered the FTT decision in its totality, I do not find that the FTT applied an inappropriately high standard of proof. In my view, the FTT was aware of the lower standard of proof that applies in a case such as this, and did not apply a standard that was higher than a balance of probabilities.

32. My conclusion is that the grounds contained within the application for permission to appeal display disagreement with the findings made by the FTT but do not disclose a material error of law. The FTT made findings open to it on the evidence, and provided sustainable reasons for those findings.

### **Notice of Decision**

The making of the decision of the FTT did not involve the making of an error on a point of law such that the decision must be set aside. I do not set aside the decision. The appeal is dismissed.

No anonymity direction was made by the FTT. There has been no request for anonymity made to the Upper Tribunal, and I see no need to make an anonymity order.

Signed

Date 18<sup>th</sup> May 2016

Deputy Upper Tribunal Judge M A Hall

### **TO THE RESPONDENT FEE AWARD**

No fee was paid or is payable. The appeal is dismissed. There is no fee award.

Signed

Date 18<sup>th</sup> May 2016

Deputy Upper Tribunal Judge M A Hall