



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA016132015

THE IMMIGRATION ACTS

Heard at Bradford

Decision and Reasons Promulgated

On 25th May 2017

On 23rd June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

AAA
(ANONYMITY DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Draycott, Counsel instructed by Ison Harrison Solicitors
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Hindson who, in a decision promulgated on the 30th November 2016, allowed the appeal against refusal of the appellant's international protection claim.
2. The appellant is a citizen of Libya who was born on the [] 1979. The basis of his claim was (and no doubt still is) that he is at risk of being murdered by his former employers in Libya in order to prevent him from making further complaints concerning their structure and organisation.

3. Judge Hindson believed that the appellant had made such complaints. He also believed “the bare facts” of the appellant’s description of a road-traffic incident, which had subsequently occurred on the 19th June 2014. He did not however share the appellant’s view that this was an attempt to kill him. He considered instead that it was an entirely innocent and unconnected event [paragraph 40]. He therefore concluded that the appellant would not be at risk of harm at the hands of his former employers upon returning to Libya [paragraph 41].
4. However, Judge Hindson also concluded that there was a risk to the appellant of suffering serious harm throughout Libya due to the situation of internal armed conflict in that country [paragraphs 37 and 38]. He based this conclusion upon travel advice issued to British and other non-Libyan travellers by the Foreign and Commonwealth Office (FCO) and an article in the ‘Libyan Observer’ that was published on the 20th September 2016. Permission to appeal against this finding was granted by Upper Tribunal Judge Grubb, who considered that (a) “it is arguable that the Judge failed to give adequate reasons for his finding based upon the background evidence and the appellant’s individual circumstances”, and (b) “it was arguably inadequate simply to rely upon the FCO travel advice”.
5. Following the decision in FA (Libya: art 15(c) Libya) CG 2016 [UKUT] 00413, the question of whether a person is at article 15(c) risk in Libya should, until further Country Guidance, be determined on the basis of the individual evidence in the case. The reasons for this conclusion are particularly illuminating given the complaint that the judge ought not “simply to rely on the FCO travel advice”:

In fact, as it seems to us, there have been numerous changes in Libya since November 2013, and that they are sufficient to render unreliable the guidance on art 15(c) given in AT. Amongst those changes are the cessation of direct flights from the United Kingdom, the ebb and flow of fighting in Libya, the rise of Daesh, and the issue of numerous reports and advice, not least by the Foreign and Commonwealth Office. [Emphasis added].

Given the above, the proposition that the judge *would have been* in error to rely solely upon the FCO travel advice (that is to say, assuming he had not also relied upon an article in the ‘Libya Observer’) is in my judgement untenable. This is particularly so given that Mr Diwnycz did not seek to argue that other background country information suggested that any other conclusion was appropriate.

6. The complaint that the judge failed to have regard to the appellant’s individual circumstances derives no doubt from the requirement in Article 15(c) that the threat to life or person must arise not only from “indiscriminate violence” due to internal armed conflict, but also that it must be “individual”. The meaning of this requirement was considered by the European Court of Justice in Elgafaji [2009] Case C - 465/07. Its conclusions are set out at paragraph 43 of the judgement -

Having regard to all of the foregoing considerations, the answer to the questions referred is that Article 15(c) of the Directive, in conjunction with Article 2(e) thereof, must be interpreted as meaning that:

- the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is **not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances;**

- the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place - assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred - **reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.** [Emphasis added]

7. It is thus clear that, exceptionally, the level of indiscriminate violence may be such that there is a risk of serious harm *solely on account of an individual's presence* in the territory in question *irrespective of personal circumstances*. Given the nature and content of the evidence that was before Judge Hindson in this appeal, I am satisfied that it was reasonably open to him to conclude that the level of indiscriminate violence arising from the internal armed conflict in Libya had crossed this particular threshold. It follows from this that Judge Hindson did not make an error of law and that this appeal must be dismissed.

Notice of Decision

8. The appeal is dismissed.

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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: 22nd June 2017

Judge Kelly

Deputy Judge of the Upper Tribunal