



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

Appeal Number: AA/10322/2015

THE IMMIGRATION ACTS

**Heard at Manchester
On 18th December 2017**

**Decision & Reasons Promulgated
On 21st December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**AHMED ABUZAYDA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Sadiq of Adam Solicitors

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appealed against the decision of Judge J Austin of the First-tier Tribunal (the FTT) promulgated on 24th April 2017.

2. The Appellant is a Palestinian born 16th June 1979. He entered the UK on 17th January 2015, having been granted a medical visit visa valid from 6th January 2015 until 6th July 2015.
3. On 18th January 2015 he claimed asylum. He claims to be a Palestinian national who was born in Tripoli in Libya and who has always lived in Libya.
4. The Appellant claimed asylum on the basis that he had been a supporter of Gaddafi in Libya and the fact that he is Palestinian heightened the risk. In addition to his asylum claim, the Appellant claimed that he would be entitled to humanitarian protection on account of the risk to civilians in Libya, and that to return him would breach his human rights in relation to Article 3. He claimed that he would not be allowed to enter Palestine because of the lack of appropriate identification documentation.
5. The appeal was dismissed on all grounds. The FTT found the Appellant to be an incredible witness and his asylum claim was dismissed on credibility grounds. The FTT did not find that the Appellant would be at risk if returned to Libya and dismissed his Article 15(c) protection claim, noting that his wife had returned to Libya without apparent difficulty.
6. The FTT found the Appellant to be a recognised Palestinian national, with a Palestinian wife, and noted that his parents are Palestinian nationals living in Gaza, and found that he would be able to return to the Palestinian territories.
7. Following dismissal of his appeal the Appellant applied for permission to appeal to the Upper Tribunal. There was no challenge to the FTT findings in relation to asylum.
8. It was contended that the FTT had erred in law in considering Article 15(c) in relation to Libya and had failed to take into account specific information and documentation placed before it, in relation to the indiscriminate violence in Libya. The FTT had failed to consider the Appellant's Palestinian background which gave rise to a heightened risk. The FTT had failed to consider that the Appellant had no legal residential status in Libya.
9. With reference to return to Palestine it was contended that the FTT had erred in law by not providing adequate reasons for the conclusion that the Appellant would be able to return to Palestine. It was contended that the FTT had failed to consider objective evidence on this issue which had been placed before it.
10. Permission to appeal was granted by Upper Tribunal Judge Kebede in the following terms;
 - "2. Although the country guidance in ZMM (Article 15(c)) Libya CG [2017] UKUT **00263** was issued after the decision in the Appellant's appeal, it arguably relates to circumstances in Libya covering the period of time

in which the appeal hearing took place. Whilst the judge plainly cannot be criticised for considering the most recent and current country guidance at that time, and for failing to take account of new country guidance not yet issued by the Upper Tribunal, it is arguable that the decision made by the judge on Article 15(c) cannot now be considered to be sustainable. Neither can it be said that it is immaterial in view of the findings in the alternative as to return to Gaza, since it is arguable that the judge's findings in that regard at [47] arguably failed to take account of all the evidence, or at least failed to address all the evidence, including in particular the document at page 3 of the supplementary bundle."

Error of Law

11. On 13th October 2017 I heard submissions from both parties in relation to error of law. On behalf of the Respondent it was accepted that the FTT had erred in law in considering Article 15(c) in relation to Libya, but it was contended that this was not a material error as the FTT had not erred in finding that the Appellant could return to Palestine.
12. On behalf of the Appellant it was submitted that as a matter of law, the Appellant would not be accepted to be Palestinian and would not be allowed to return there. It was contended that the FTT had ignored material evidence to confirm that the Appellant would not be allowed to enter Palestine.
13. I found a material error of law disclosed in the FTT decision, and set aside the decision but preserved the findings which had not been challenged, in relation to the asylum claim. Full details of the application for permission, the grant of permission, the submissions made by both parties, and my conclusions are contained in my decision dated 17th October 2017, promulgated on 23rd October 2017. I set out below paragraphs 21 - 27 which contain my conclusions and reasons for setting aside the FTT decision;

"21. In my view Mr McVeety rightly conceded that the FTT had erred in considering Article 15(c) in relation to Libya. Judge Kebede in granting permission to appeal makes it clear that the FTT cannot be criticised for considering the country guidance that was before it, and could not take account of country guidance not yet published. However, there was evidence before the FTT which contended that there would be an Article 15(c) risk for a returnee.

22. Some of the objective evidence was specifically referred to in the Appellant's skeleton argument before the FTT. The bundles submitted on behalf of the Appellant contain reports from UNHCR, Human Rights Watch, and Amnesty International. The FTT findings are to be found in paragraphs 42 - 48. Paragraphs 42 - 45 make credibility findings in relation to the Appellant's asylum claim. There is no challenge to those findings.

23. Paragraph 46, which is brief, finds that there would be no Article 15(c) risk to the Appellant if returned to Libya. The point is made by the FTT,

that the country guidance case in force, indicates that each case should be considered on the basis of the individual evidence in that case.

24. The error made by the FTT is not to consider some of the evidence submitted on behalf of the Appellant. The FTT decision gives no indication that the background evidence relevant to risk on return in relation to Article 15(c) has been considered and analysed. The failure to consider and analyse potentially material evidence is an error of law.
25. The FTT findings in relation to the possibility of the Appellant returning to Palestine are set out in paragraph 47. There is reference at paragraph 41 of the decision, which summarises the submissions made on behalf of the Appellant, to a letter from the Palestinian Mission at page 32 of the Appellant's bundle. My view is the reference is in fact to page 3 of the Appellant's bundle which is the letter from the Palestinian Mission to the UK dated 5th December 2016. There is, however, no analysis and conclusions reached on the contents of that letter. In summary, the letter states that what has been described by Mr McVeety as a Palestinian passport does not entitle the Appellant to enter the Palestinian territories and there is no indication that this point has been considered by the FTT. Equally, I accept that there is no indication in paragraph 47, that the Operational Guidance Note or the report referred to in the grounds seeking permission to appeal have been analysed and considered.
26. This is a failure to consider and make findings upon potential material evidence, and amounts to a material error of law. When taken together with the error of law in relation to the consideration of Article 15(c) with reference to return to Libya, I find that the decision is unsafe and is therefore set aside.
27. The decision needs to be made again and there will be a further hearing before the Upper Tribunal. The findings that have been made in relation to credibility and asylum have not been challenged and are preserved. The purpose of the next hearing is to consider the issue of Article 15(c) risk if there is a return to Libya, and to consider the possibility and feasibility of return to Palestine."

Remaking the Decision

The Upper Tribunal Hearing - 18th December 2017

14. The Appellant attended the hearing. There were no difficulties in communication between the Appellant and interpreter in Arabic.
15. I ascertained that I had received all documentation upon which the parties intended to rely, and that each party had served the other with any documentation upon which reliance was to be placed. I had the Respondent's bundle of documents with Annexes A - D, that had been before the First-tier Tribunal. I also had the Appellant's bundle "AB1" comprising 121 pages and the Appellant's bundle "AB2" comprising 28

pages, both of which had been before the FTT. In addition a further bundle had been filed on behalf of the Appellant comprising five pages.

16. The case was put back as Mr Diwnycz had not seen my error of law decision dated 17th October 2017 and a copy was provided to him, together with a copy of the recent Appellant's bundle comprising five pages which I will call "AB3".
17. The hearing was put back to allow Mr Diwnycz to consider the documentation he had not seen. When the hearing resumed both representatives indicated that they were ready to proceed and there was no application for an adjournment. Mr Sadiq submitted the original letters issued by the Palestinian Mission to the UK dated 5th December 2016 and 6th December 2017, copies of which were in the Appellant's bundles.
18. It was agreed that in the light of ZMM Libya CG, it could not be argued that it would be safe for the Appellant to return to Libya. The issue to be decided was therefore whether the Appellant could relocate to Palestine.

Oral Evidence

19. The Appellant adopted his witness statement dated 12th December 2017. He was not questioned by Mr Sadiq, and there was no cross-examination.
20. The Appellant's evidence contained in his witness statement is briefly summarised below.
21. He had attended the Palestinian Mission in London and as a result had obtained the letter dated 6th December 2017 and further clarified the position regarding the issuance of his travel document/passport issued in June 2012. The Appellant's case is that he has always lived in Libya, and has never visited Palestine. He was not present in Ramallah which is in Palestine, when the travel document was issued.
22. The Appellant explained that his parents had initially travelled to Libya in the early 1970s, they had seven children, six sons and a daughter. The Appellant's parents have returned to Palestine. They had been able to do so because they were born in Palestine.
23. Two of the Appellant's brothers and his sister returned to Palestine. They used the illegal tunnels running between Egypt and Gaza. Two of the Appellant's brothers remained in Libya. One had been killed and the other is missing.
24. The position of the Appellant's brothers and sister in Gaza is that they are not formally registered and have no formal identity papers. They do not have the rights that people born and registered in Palestine have. They can therefore only take casual and occasional work.

Oral Submissions

25. Mr Diwnycz relied upon the Respondent's reasons for refusal dated 6th July 2015 but accepted the country guidance case law in relation to Libya had been published subsequent to that refusal, and that there was further evidence in relation to the issue of return to Palestine. No further oral submissions were made.
26. Mr Sadiq submitted that the country guidance decision in ZMM made it clear that it would not be safe for the Appellant to return to Libya. His case was that he had never been to Palestine and in law he would not be recognised as a Palestinian and would therefore have no right to enter Palestine.
27. In support of this submission Mr Sadiq referred me to the Respondent's Operational Guidance Note on the Palestinian occupied territories, the letters dated 5th December 2016 and 6th December 2017 issued by the Palestinian Mission to the UK, a report by the Refugee Board of Canada dated 29th October 2015, and a document at page 89 of AB1 which is a document issued by the Palestinian National Authority, confirming that the Appellant does not have the right to reside in Palestine, and holds only a temporary Palestinian passport issued on 12th June 2012.
28. I was asked to find that as the Appellant could not safely return to Libya, and he could not relocate to Palestine, his appeal should be allowed on the basis that he is entitled to a grant of humanitarian protection, and that to remove him from the UK would breach Article 3 of the 1950 European Convention on Human Rights (the 1950 Convention).
29. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

30. The burden of proof is on the Appellant and the standard of proof is a reasonable degree of likelihood.
31. The issue before me relates to humanitarian protection and Article 3 of the 1950 Convention. I will set out at this stage the preserved findings of the FTT, in relation to the Appellant's asylum claim which was dismissed;

"42. I do not accept the Appellant's claim that he left Libya because he was at risk of persecution as an individual. He has not shown to the required lower standard that this is the case. He left Libya to travel to Italy at a time when the reasons for his claim for asylum already applied, namely the threatening phone calls and the physical abuse on one occasion at a checkpoint because of his Palestinian identity. He worked for an Italian company in a professional capacity. He has not provided a reasonable explanation as to why he did not apply at a time when, as an employee of an Italian firm, his position would have been strongest. The absence of his wife is not a reason when he has already agreed to her returning to Libya in 2016 whilst this claim is being made in the UK. The Appellant's visit to the UK subsequently in 2014, when he again made no claim for asylum, when his reasons already existed, undermines his credibility.

43. The Appellant relies on his evidence 'in the round' about his genuine fear of persecution. If he was concerned about threatening calls to his phone, changing his phone number would have been a basic precautionary step. He did not do so. Moving home would have been a more inconvenient and yet reasonable precaution to take. He did not do so. When he did eventually move for work reasons, but did not change his number, the threats ceased. The claimed difficulties with a security guard at his place of employment do not amount to a basis for asylum. On his own evidence he took no steps to try to remedy the situation by reporting it. It is not credible.
44. The Appellant claims that two events have occurred more recently which bolster his claim. The death of a brother abducted some time ago, and the issue of an arrest warrant in December 2016, which has come into the hands of his father-in-law and a copy sent to him this year. I am invited to give little or no weight to these documents. They are not in original form and they have been submitted at a late stage. I do attach little weight to the claimed arrest warrant. On the basis of the Appellant's evidence such a document does not meet common sense when there is no evidence of any interest of the authorities in him, a man who has travelled freely between Libya and Italy, and Libya and the UK on two occasions, and whose wife has recently returned to Libya and re-entered without significant difficulty.
45. The Appellant's credibility is also undermined by the fact that when he came to the UK and claimed asylum, he had done so and admitted doing so in order to seek medical treatment, a fact that he has since disputed unconvincingly in my view, bearing in mind the clear statement he made in his asylum interview."
32. The Appellant is not entitled to asylum. He has not proved that he has a well-founded fear of persecution for a Convention reason. I therefore must consider whether the Appellant is entitled to humanitarian protection which entails him showing substantial grounds for believing that if returned to Libya, he would face a real risk of suffering serious harm, and is unable, or owing to such risk, unwilling to avail himself of the protection of the Libyan authorities. In addition I must consider whether returning the Appellant to Libya would mean that he would be at risk of being subjected to torture or to inhuman or degrading treatment or punishment.
33. I find that the Appellant would be at risk if returned to Libya on the basis of the guidance given by the Upper Tribunal in ZMM Libya CG the headnote of which is set out below;
- "The violence in Libya has reached such a high level that substantial grounds are shown for believing that a returning civilian would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to a threat to his life or person."
34. The Appellant would therefore be entitled to a grant of humanitarian protection, and his removal from the UK would breach Article 3, unless he could safely relocate to Palestine.

35. I accept the Appellant's evidence that he claims Palestinian nationality because his parents were Palestinian, but that he was born in Libya and has always lived in Libya. I accept that he has never visited Palestine. I accept that he was not present in Ramallah when his passport/travel document was issued in June 2012. I place weight upon the Appellant's evidence, but I also place weight upon what I regard as independent and objective evidence that supports the Appellant's evidence.
36. I place weight upon the Respondent's OGN on the Occupied Palestinian Territories although it is of some age, being dated 19th March 2013. At paragraph 3.15.3 it is stated that the great majority of Palestinians are stateless. At 3.15.4 it is stated Israel conducted a snap census in the Palestinian territories in September 1967, and any individual not registered had their residency rights revoked, which meant that tens of thousands of Palestinians who were studying, working or travelling abroad immediately lost any entitlement to residency and today have no official identity. Some of this group, arbitrarily dispossessed of any nationality, later applied to return to Palestine through a family reunification programme, and some were granted the right to live in Palestine as temporary visitors or tourists but even this right has been difficult to obtain or sustain. I place weight upon the letter dated 5th December 2016 issued by the Palestinian Mission to the UK, which was written as a result of the Appellant enquiring with the mission, about the status of the Palestinian passport issued to him in June 2012. This letter confirms that Palestinian passports are issued by the Palestinian National Authority in either the West Bank or Gaza only to Palestinians who hold Palestinian ID cards. Palestinian refugees living abroad cannot be issued with Palestinian ID numbers, they usually travel on travel documents issued to them as a person who is stateless.
37. Palestinian ID cards cannot be applied for from abroad as the Israeli forces control the Palestinian borders, and will only admit Palestinians who have ID numbers. The Palestinian passport issued to the Appellant does not entitle him to free entry to the Palestinian territories, as he is not resident either in Gaza Strip, or in the West Bank, and he does not possess a Palestinian resident ID card. The letter goes on to explain that the passport was issued to him, solely to facilitate his travel and movement abroad. The Palestinian Mission to the UK has no authority to issue Palestinian travel documents or passports.
38. Further enquiries made by the Appellant to the Palestinian Mission to the UK resulted in the letter dated 6th December 2017, to which I also attach weight. This confirms Palestinian embassies and missions abroad have no authority to issue or renew passports, they can receive applications and deliver them to the Ministry of Interior in Ramallah. Applicants abroad are not required to travel to Ramallah in order to renew or issue passports but can be provided with certified (powers of attorney) from the Palestinian Missions in their respective countries of residence to a trusted person to process their application. The letter confirms that holding a Palestinian

passport issued in Ramallah does not necessarily mean the holder has been in Ramallah.

39. I also place some weight upon the Refugee Board of Canada report dated 29th October 2015 which at paragraph 2.1 quotes the Jerusalem Post stating that applicants for a Palestinian passport need to have a birth certificate showing that they were born in Palestine as well as a current Palestinian identity card.
40. I am satisfied that the Appellant cannot produce a birth certificate showing that he was born in Palestine, and does not have a current Palestinian identity card. I am also satisfied that he has not visited Ramallah to obtain the passport/travel document, and that was obtained on his behalf while he remained in Libya. I accept the letters from the Palestinian Mission to the UK, that this passport/travel document, does not entitle the Appellant to enter Palestinian territories. I also place some weight on a further document that the Appellant has obtained at page 89 of AB1. This was issued in Gaza on 9th February 2016 and confirms that the Appellant holds only a temporary Palestinian passport issued on 12th June 2012, and that he does not hold a Palestinian identity card. The Appellant explained in his witness statement dated 27th January 2017 contained within AB2 that this confirmation of his non-residence status in Palestine was sent to him by his brother in Gaza. He made enquiries on the Appellant's behalf with the Palestinian authorities there. The Appellant received that document in the post from his brother in November 2016 and enclosed a copy of the relevant envelope.
41. In conclusion I find that the Appellant has proved to a reasonable degree of likelihood, that he would not be allowed legal entry to the Palestinian territories. Therefore, as the Appellant cannot safely return to Libya, I find that his removal from the UK would breach the UK's obligations in relation to persons eligible for a grant of humanitarian protection, and that his removal would be unlawful under section 6 of the Human Rights Act 1998, as his removal would breach Article 3 of the 1950 Convention.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and was set aside. I substitute a fresh decision as follows.

The appeal is dismissed on asylum grounds.

The appeal is allowed on humanitarian protection grounds, and with reference to Article 3 of the 1950 Convention.

Anonymity

The FTT made no anonymity direction. There has been no request for anonymity and no anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

19th December 2017

**TO THE RESPONDENT
FEE AWARD**

No fee award is made. The appeal has been allowed because of evidence presented to the Tribunal that was not before the initial decision maker.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

19th December 2017