



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

Appeal Number: PA/00138/2016

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 5 June, 2017**

**Decision & Reasons Promulgated  
On 12 June, 2017**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**M A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Z Jafferji, instructed by Burton & Burton Solicitors  
For the Respondent: Ms Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, M A, was born in 1972 and is a citizen of Libya. The appellant appealed to the First-tier Tribunal (Judge V A Cox) against a decision of the respondent to refuse him asylum which is dated 5 November 2015. The First-tier Tribunal, in a decision promulgated on 28 February 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The judge was required to consider the appeal on asylum, human rights and humanitarian protection grounds. However, at [58], the judge perpetrated a clear error when he wrote, "*I do not need to consider [humanitarian protection] as the appellant has been successful in her claim for asylum.*" It is not clear why the appellant has changed gender at this point in the decision but what is very clear is that in the preceding paragraph [57] the judge had found that the asylum appeal should be dismissed. It was not correct, therefore, for the judge to ignore the claim for humanitarian protection on the basis that the appellant had succeeded in the asylum claim because he had not done so. It is the case that the judge went on to consider humanitarian protection in the alternative and on the basis that the appellant was entitled to appeal on that basis given that he then wrote, "*Given the conclusions I have reached I would in any event have found there were substantial grounds for believing that the appellant would not face a real risk of suffering serious harm if returned to the country of origin and that the appellant's removal would not cause the United Kingdom to be in breach of its obligations under the Qualification Directive.*" This sentence appears to have been included from a standard template and is insufficient, in my opinion, properly to dispose of the humanitarian protection aspect of the appeal; it is not clear which "conclusions" reached earlier in the decision that the judge is referring to here or why those conclusions (made in relation to the asylum appeal) might necessarily relate to humanitarian protection. In any event, as I have noted above, the judge should have proceeded to analyse the humanitarian protection claim properly and in any event given that it was a live issue following the dismissal of the asylum appeal.
3. I have considered whether I should leave the asylum decision intact but I am not persuaded that that would be appropriate. The grounds of appeal challenge the judge's findings in respect of the appellant's claim to have worked for the previous regime in Libya and also his *sur place* activities. It is certainly the case that the judge has provided in his analysis some reasons for finding the appellant's account to be incredible but, equally, he has resorted to generalisation ("*the appellant has failed to provide any satisfactory evidence ...*") which leaves his reasoning in doubt. It is unclear exactly what evidence the judge considered that the appellant had failed to adduce and, indeed, why that evidence might be 'satisfactory' when that which the appellant has adduced is not. Having considered the decision carefully, I am persuaded that the only prudent course of action is to set aside the decision in its entirety together with the findings made by the judge. The next Tribunal will need to consider asylum and Article 3 ECHR afresh and must also, if it does not allow the asylum appeal, conduct a proper examination of the appeal in respect of humanitarian protection. When it does so, it will need to consider the most recent country guidance which, as Judge Pedro (who granted permission to appeal) noted appears to have been ignored to a large extent by the judge (*FA (Libya: Article 15(c)) CG [2016] UKUT 413 (IAC)*).

**Notice of Decision**

4. The decision of the First-tier Tribunal which was promulgated on 28 February 2017 is set aside. None of the findings of fact shall stand. The appeal should be remitted to the First-tier Tribunal (not Judge V A Cox) for that Tribunal to remake the decision.

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

5. 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 10 June 2017

Upper Tribunal Judge Clive Lane

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 10 June 2017

Upper Tribunal Judge Clive Lane