



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

Appeal Number: PA/02184/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 19 September 2017**

**Decision & Reasons
Promulgated
On 22 September 2017**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**A.F.S.O.S
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Saldanha of Duncan Lewis & Co Solicitors
For the Respondent: Mr P Armstrong, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Libya, appeals against the decision of judge of the First-tier Tribunal Burnett (the judge), promulgated on 21 June 2017, dismissing his asylum and humanitarian protection appeal against a decision of the Respondent, dated 10 February 2017, refusing his protection claim.

2. The Appellant was born on [] 1973. On 8 November 2013 he was issued with entry clearance in order to study in the UK, valid until 1 November 2014. He arrived in the UK on 9 January 2014. On 6 February 2014 he briefly returned to Libya where he married before re-entering the UK on 15 February 2014. On 14 October 2014 he made an appointment to claim asylum. He claimed to hold a well-founded fear from his ex-wife's family and as a result of his involvement in an investigation into a robbery involving very significant sums. For the purposes of this "error of law" hearing it is not necessary to consider in any more detail the Appellant's account of why he claimed to face persecution in Libya. This is because the judge concluded that the Appellant fabricated his claimed fear on account of being involved in an investigation into the robbery and that there was no genuine and real threat to him from his ex-wife's family. Those aspects of the decision have not been challenged.
3. The Appellant additionally claimed that his removal to Libya would expose him to a serious and individual threat to his life or person as a result of indiscriminate violence (Article 15(c) of the Qualification Directive). In assessing whether the Appellant would be exposed to such a threat the judge had regard to the country guidance case of *FA (Libya: art 15(c)) Libya CG* [2016] UKUT 00413 (IAC). The headnote of this decision reads:
 1. *The question of whether a person is at art 15(c) risk in Libya should, until further Country Guidance, be determined on the basis of the individual evidence in the case.*
 2. *This decision replaces AT and Others Libya CG [2014] UKUT 318 (IAC) in respect of assessment of the art 15(c) risk*
4. In assessing the evidence before him the judge referred (at [69]) to an expert report from Prof Joffe and a copy of the Home Office guidance note on Libya, both of which post-dated the earlier country guidance case of *AT*. At [70] the judge stated,

"I have carefully read the information which was placed before me. The information contained within the Home Office country information and policy note (CIPN) of January 2017 largely reflects the expert report of Prof Joffe."
5. The judge then set out extracts from the CIPN report relating to the deterioration in humanitarian conditions in Libya since 2011, the extensive damage to civilian homes and public infrastructure, the impact on all major towns and cities in the country, the position of internally displaced people, the groups that may be vulnerable, and the statistics relating to civilian casualties (at [70] and [73]). At [71] the judge set out the CIPN's conclusion on whether article 15(c) applied to Libya. The CIPN stated,

'In general, although conditions in Libya are poorer, they do not reach the threshold that would make removal breach article 15 of the Qualification Directive. However, the humanitarian situation is variable across the country. Members of vulnerable groups, particularly where humanitarian conditions are poorer and humanitarian aid is less accessible, are at greater risk of serious harm.'

6. Having regard to the contents and conclusions of the CIPN report, and having found, despite the inadequacy of medical evidence, that the Appellant was a vulnerable individual, the judge concluded that Tripoli was less affected than other parts of the country and the violence less severe there and that the statistics indicated that the chances of civilians being caught up in violence were relatively low. The judge also concluded that the medical evidence provided on behalf of the Appellant did not establish that he would suffer serious harm if returned to Libya, although he might suffer a degree of harm. The judge concluded that article 15(c) was not engaged and dismissed the appeal.
7. The Grounds of Appeal were twofold. It was first contended that the judge failed to give adequate consideration to the expert report from Prof Joffe which was dated 12 April 2017. Although the judge acknowledged the report and commented that the report was largely reflected in the earlier CIPN report of January 2017, no further reference was made to Prof Joffe's assessment. It was submitted that the judge erred in law by not having sufficient regard to the expert report. The 2nd ground of appeal contended that the First-tier judge was still seized of the case until its promulgation on 21 June 2017. It was argued that the judge was therefore bound by a new country guidance case, *ZMM (Article 15(c)) Libya CG* [2017] UKUT 00263 (IAC) which, although only promulgated on 28 June 2017, was signed off by the Upper Tribunal judge on 20 June 2017. Although in terms that are not entirely satisfactory permission was nevertheless granted by the First-tier Tribunal.
8. Although initially listed as a full 'error of law' hearing an amended Notice of Hearing was issued to the parties informing them that the matter would be listed as a "for mention". It is unclear to me why the Notice of Hearing was amended. I enquired from both representatives at the hearing whether they were prepared to address me on the substantive issues identified in the Grounds of Appeal. Mr Armstrong was happy to adopt this proposed course of action, and Mr Saldanha was also happy provided that he had sufficient opportunity to consider the expert report and the First-tier Tribunal's determination. With this in mind I put the matter back to enable Mr Saldanha to sufficiently familiarise himself with the material.
9. On reconvening the hearing Mr Saldanha proceeded with his submissions. He referred me to various passages of Prof Joffe's report which he submitted were not considered by the Judge and which may

have made a material difference to the Judge's decision if so considered. At paragraph 141 of his expert report Prof Joffe indicated that the situation in Libya had significantly deteriorated in recent months, particularly in Western Libya. At paragraph 142 Prof Joffe stated that the new government had still not been able to impose itself in Tripoli and was still rejected by the militia coalitions. At paragraphs 155 and 160 the expert indicated that nowhere in Libya, even the centre of the capital, was considered to be a secure environment in light of renewed fighting between local Militias in March 2017. At paragraph 156 it was noted that a large part of the country was now a closed zone, and that relocation was not a realistic possibility and there was no authority capable of providing protection against arbitrary arrest. It was Prof Joffe's view at paragraph 158, supported by referenced material, that violence in Libya was indeed 'indiscriminate' and it was clear that the state could not offer any protection against it. At paragraph 160 the expert stated that Tripoli and its surroundings were increasingly a region of contestation between different militia coalitions.

10. Although Mr Armstrong submitted that the judge had considered the expert report in detail he ultimately accepted that the judge failed to demonstrate that he exercised sufficient anxious scrutiny in respect of the long and detailed country report.
11. Having considered the extracts of Prof Joffe's expert report detailed above, and having regard to the CIPN report, I am satisfied that the judge failed to adequately engage with the information contained in the expert report. Although the CIPN report does reflect some of the conclusions reached by Prof Joffe, and the evidential basis upon which he relies for those conclusions, the expert report itself went significantly further in detailing the deterioration in all major cities in Libya and the concomitant risks faced by any individual on return there. Had the judge fully engaged with these aspects of the expert report he may have reached a different conclusion. In these circumstances I am satisfied that the judge failed to 'get to grips' with the expert report and that, had he properly considered the report with the requisite anxious scrutiny, his ultimate conclusion may have been different. In these circumstances I am satisfied that the judge materially heard law.
12. Having found that the judge erred in his approach to the expert evidence it is not necessary for me to consider whether the judge should have been aware of a country guidance case that was signed off by the Upper Tribunal a day before the promulgation of the judge's decision, but only promulgated 8 days later.
13. Having identified a material error of law both parties were happy for me to immediately proceed to remake the decision having proper regard to Prof Joffe's and, in particular, the new country guidance case

of *ZMM*. I heard very brief submissions from Mr Armstrong and Mr Saldanha was happy for me to simply take account of *ZMM*.

14. There is no dispute as to the Appellant's nationality. The Secretary of State is not proposing to return the Appellant to any country other than Libya. In *ZMM* the Upper Tribunal, consisting of the President of the Upper Tribunal and another Upper Tribunal judge, considered with care a large volume of very recent background evidence relating to the country situation in Libya. The Tribunal concluded that the violence in Libya had reached such a high level that substantial grounds were shown for believing that a returning civilian would, solely on account of his presence in the territory of that country or region, face a real risk of being subjected to a threat to his life or person.
15. Applying the conclusions in *ZMM* to the factual matrix determined by the First-tier Tribunal judge, I am satisfied that the Appellant would be a returning civilian and, if returned to Libya, would face a real risk of being subjected to a threat to his life or person sufficient to trigger the operation of article 15(c). In the circumstances I find that the Appellant is entitled to Humanitarian Protection.

Notice of Decision

**The First-tier Tribunal decision is vitiated by a material error of law.
The appeal is allowed on Humanitarian Protection grounds.**

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

Unless and until a Tribunal or court directs otherwise, the Appellant in this appeal 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 Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.



21 September 2017

Signed

Date

Upper Tribunal Judge Blum