



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

Appeal Number: PA/02535/2015

THE IMMIGRATION ACTS

**Heard at Liverpool
On April 27, 2017**

**Decision &
Promulgated
On May 4, 2017**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR MOHAMMED ZYDAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Faryl, Counsel, instructed by Immigration Advice Service

For the Respondent: Mr Harrison (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant is a citizen of Libya. He arrived in this country on July 2, 2015 and claimed asylum. The respondent refused his application for asylum on October 26, 2015.
2. The appellant appealed that decision on November 9, 2015 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. His appeal came before Judge of the First-tier Tribunal Malik (hereinafter called the Judge) on November 10, 2016 and in a decision promulgated on December 13, 2016 the Judge refused his appeal. He appealed that decision on December 28, 2016 but Judge of the First-tier Tribunal Dineen refused permission to appeal. Grounds of appeal were renewed and Upper Tribunal Judge Gleeson granted permission finding it arguable the Judge had erred on her assessment of the medical evidence and this impacted on his assessment of the evidence.
4. I do not make an anonymity order in this case.

SUBMISSIONS

5. Ms Faryl relied on the grounds of appeal and submitted the Judge's approach was wrong. The Judge had failed to have regard to material contained in the appellant's bundle that as a Black Libyan the appellant would face persecution. The fact he could not name the group who kidnapped him was a minor issue in circumstances where there were over 1700 armed groups. The medical evidence confirmed his injuries and the Judge's treatment of the medical report was inadequate. The expert made it clear that certain injuries were consistent with his claim. The expert was qualified to make the findings he did and the Judge gave no real reasons for rejecting the same. The expert had distinguished between self-inflicted and those inflicted by other means and the Judge failed to attach sufficient weight to the report. She submitted there was an error in law.
6. Mr Harrison adopted the Rule 24 response dated April 4, 2017 and submitted the Judge had carefully considered all of the evidence and attached appropriate weight to the expert report. The Judge's findings on the expert evidence was open to her. The Judge was not making medical findings but simply interpreting the evidence that was before her. The Judge considered at paragraph [35] whether the appellant would be at risk but concluded his account lacked credibility and consequently his case had not been made out.
7. I reserved my decision.

FINDINGS

8. Two primary challenges were made to the Judge's decision in relation to her handling of both the country evidence and the expert evidence. Upper Tribunal Judge Gleeson concentrated on the latter in giving permission.
9. The expert had examined the appellant's scarring and noted the account he had given. The Judge considered this report in its entirety and at the same time she considered the account given by the appellant of events in Libya.
10. The Judge accepted the appellant was from Ajdabiya, Libya and was of Tebu ethnicity. The Judge had to consider his claim to have been abducted twice and tortured. To assist her with that decision the Judge considered

the evidence provided by the scarring expert. The Judge noted the expert's conclusions but balanced the expert's opinion against the fact he had similar scars elsewhere on his body that he attributed to forfeit games he played with friends.

11. Ms Faryl submits that the Judge should have accepted the expert's findings but that approach ignores the Judge's own role. As the arbiter of findings of facts she was entitled, if she provided reasons for doing so, to reject the expert's evidence. In his own evidence the appellant accepted that some of the scars on his body were inflicted by friends and the Judge concluded that there was nothing in the expert report that she believed ruled out the fact that the other scars, identified as the effects of torture, to have been carried out by the appellant's friends. Ms Faryl submitted that the expert ruled that out but the expert merely states at paragraph [50] of the report that the scars could not be caused by accident or chance. He concluded they were deliberately inflicted on the appellant and they were not everyday injuries.
12. The Judge noted that the appellant had similar injuries committed by his friends as part of a forfeit game and I am satisfied that that particular finding was open to the Judge. She had made adverse findings about his claim and concluded that these injuries were not caused as part of torture but were part of a forfeit game. This was not the Judge placing herself in the position of a scarring expert but simply her examining the evidence and making findings. The fact is the appellant opened the door to such a finding when he explained similar scars were caused during a game. Whilst he denied these were part of a game the Judge was entitled to reject that account and having done so it was open to her to make the findings she did on the scars.
13. In paragraphs [31] to [34] she considered his claim of being abducted and thereafter made findings open to her on those issues. Many of those findings remain unchallenged.
14. Ms Faryl other primary submission related to the Judge's approach to the risk facing Black Libyans. The Judge quoted from AT and others (article 15c; risk categories)U Libya [2014] UKUT 318. The Judge referred to FA (Libya; article 15c) Libya CG [2016] 00413 (IAC) and remarked at paragraph [37] of her decision that she had considered the evidence in the appellant's bundle but she then went onto find that merely being present did not engage article 15c. She concluded there was no evidence that an article 15c situation existed in Ajdabiya that would engage article 15c.
15. Ms Faryl submits the Judge failed to consider the evidence contained in the appellant's bundle but the Judge noted what the Tribunal said in AT about black Libyans and the discrimination was something recognised in articles contained in the appellant's bundle. Whilst AT is no longer country guidance the latest country guidance report and other material does not say the position for the Tebu or Black Libyans has deteriorated to engage either the Refugee Convention or article 15c.

16. The Tribunal reminds us in FA that each case is fact sensitive and I am satisfied the Judge properly considered the issues raised by Ms Faryl both before me and before the First-tier Tribunal.

17. In those circumstances, there is no error in law.

DECISION

18. There was no error in law and the Judge's decision shall stand.

Signed

Date

May 3, 2017

Deputy Upper Tribunal Judge Alis

**FEE AWARD
TO THE RESPONDENT**

No fee award is made as the appeal was dismissed.

Signed

Date

May 3, 2017

Deputy Upper Tribunal Judge Alis