



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02719/2015

THE IMMIGRATION ACTS

Heard at Manchester
On 25 August 2017

Decision & Reasons Promulgated
On 26 September 2017

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

NM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Hussain from Lei Dat & Baig Solicitors

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

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

Unless and until a Tribunal or court directs otherwise, the appellant herein is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's family. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Introduction

1. The appellant is a male citizen of Libya born on [] 1940. He arrived in the United Kingdom on 22 April 2015 with a visit visa, having left Libya in the same month. It is not in dispute that he originates from Tripoli and has relatives in the village of Zuwara.
2. The appellant appealed to the First-tier Tribunal against the decision of the Secretary of State for the Home Department (“SSHHD”) of 30 October 2015 refusing his protection and human rights claims. The appellant’s wife, born January 1951, is a dependant on this appeal.

Decision of the First-tier Tribunal

3. For detailed reasons given in a decision promulgated on 9 January 2017 the First-tier Tribunal dismissed the appellant’s appeal on all grounds. The following two paragraphs of that decision are of particular relevance:

“80. I accept that Libya is not currently a country at peace with itself, and that there are areas where the violence is so intense that it reaches the level anticipated by Article 15(c) of the Qualification Directive. I also accept that outbreaks of violence can occur in all areas of Libya but these do not pose such a severe risk so as to engage Article 15(c). On the basis of the appellant’s evidence I find that the area in which he lives is not one where he would be at such a risk of serious harm or death such as would engage Article 15(c). The appellant has lived without problem in Tripoli and travelled freely through checkpoints without encountering problems. ...

87. I accept that the appellant may not want to live in Zuwara because it is a small village and there is nothing happening there but that is not a sufficient reason for a grant of international protection. The appellant and his wife have always lived in Tripoli and although they are now of advancing years both had continued to work until they came to the UK in April 2015. I do not accept the appellant’s evidence that he no longer has any money because he provided verified proof when he applied for a visa to come to the UK that he had a pension income of £1,000 per month. His two daughters live in Zuwara and he has extensive extended family living in and around the area of Zuwara and Tripoli who would be able to assist them on return”.

Setting aside of First-tier Tribunal’s decision

4. Upper Tribunal Judge Coker granted permission to appeal on 18 May 2017 in the following terms:

“2. Although the First-tier Tribunal Judge correctly considers FA (Libya: Article 15(c)) Libya CG [2016] UKUT 413 in that he acknowledges that it is necessary to consider the current situation in Libya, it is arguable the judge reached his

decision on the basis of the applicant's experiences and the situation at the time when he was last in Libya rather than in the light of the current situation i.e. at the date of the hearing".

5. In her 'Rule 24' response of 6 June 2017 the Secretary of State asserted, *inter alia*, that "it did not appear that the appellant [had] relied on any specific evidence in respect to the current situation in Libya and the Secretary set out in detail her view... in her refusal letter"
6. This assertion is though, in part, inaccurate. The appellant produced a bundle of documents before the First-tier Tribunal which included within it reports relating to the situation in Libya.
7. In particular the bundle contains a report of June 2016 from the Home Office headed "Country Information and Guidance Libya: Security and humanitarian protection" This report presents a grim picture of the humanitarian situation in Libya, identifying a deterioration in the general situation and, significantly, that certain categories of people are particularly vulnerable, including "the elderly". A later report produced by the Home Office of March 2017, and served by the Secretary of State on the First-tier Tribunal, did not identify any improvement in the situation.
8. Given the evidence identified above Ms Isherwood accepted that the First-tier Tribunal had erred in failing to set the appellant's circumstances in the proper and relevant context of the background country evidence that it had before it. In particular, there were aspects of that evidence that showed a deteriorating situation since the time of the appellant's departure and that "the elderly" were a vulnerable group, a matter not alluded to by the FtT.
9. It was undoubtedly incumbent upon the First-tier Tribunal to, at the very least, engage with the aforementioned evidence and identify why this appellant (and his wife), who can both quite properly be described as elderly, could not make out their case to be at risk, in the Article 15(c) sense, upon return. It did not do so. It is clear that the First-tier Tribunal carried out the assessment of risk faced by the appellant on the basis of his past experiences in Libya without setting this assessment in the context of the changing situation in that country.
10. For these reasons, I set aside the determination of the First-tier Tribunal.

Re-making of the decision under appeal

11. At the hearing, I directed that the decision under appeal be re-made by the Upper Tribunal
12. In this regard, I observe that subsequent to the date of the First-tier Tribunal's decision the Upper Tribunal has given detailed consideration to the situation in Libya, in ZMM (Article 15(c)) Libya CG [2017] UKUT 263, the head note to which reads as follows:

"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”.

13. It is to be recalled, as identified above, that the appellant and his wife are in a particularly vulnerable category of person. It is also relevant to identify, from paragraph 93 of the decision in ZMM, that:

“We do not doubt that there are in Libya today towns and villages which are relatively calm where notwithstanding the absence of effective government, people are going about their normal lives. We cannot however be satisfied that the peace in these oases is stable or durable or that the notional returnee to Libya would be able to safely access such locations”.

14. Given the terms of the decision in ZMM, and in particular those passages which I have identified above, Ms Isherwood indicated that she did not seek to resist a finding that the appellant would be entitled to a grant of humanitarian protection. I concur. When the decision in ZMM is applied to this appellant’s circumstances, and in particular taking account the appellant’s age, it is plain that the appellant’s return to Libya would be in breach of Article 15(c).
15. There is no Refugee Convention reason in this case and Mr Hussain did not seek to persuade me otherwise. In all the circumstances, the appeal is dismissed insofar as it was pursued on Refugee Convention grounds, but allowed on humanitarian protection grounds.

Decision

For the reasons given above:

The decision of the First-tier Tribunal is set aside

Upon the decision under appeal being re-made by the Upper Tribunal, the appellant’s appeal is allowed on humanitarian protection grounds and dismissed on all other grounds.

Signed:



Upper Tribunal Judge O’Connor

Date: 25 August 2017