



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03469/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

On 28th November 2017

**Decision & Reasons
Promulgated**

On 15th December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

A Z A I

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Logan of Counsel, instructed by Deane & Bolton
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Moxon made following a hearing at Bradford on 9th May 2017.

Background

2. The appellant is a citizen of Libya born on 29th August 1984. He came to the UK on 30th April 2014, on a student visa, and returned to Libya on 31st December 2014. He then applied for a Tier 4 visa, entering the UK again on 8th April 2015 and was granted further leave to remain until 30th October 2017. He made a brief visit back to Libya in June to July 2016.

3. The appellant claimed asylum in the UK on 6th October 2016. He claimed that, if returned to Libya, he would be at risk of harm by militia as he is believed to be a supporter of the Gaddafi regime, although he had never worked for Gaddafi and never met him. His late father had been a colonel in Gaddafi's forces. The appellant said that he had been beaten because of the family's support of Gaddafi in 2011 and had been taken to prison and detained and tortured. He was then arrested for a second time in October 2012 and detained for a month. He also claimed that he could not return to Libya because his son suffers from a skin condition which requires specialist medication and healthcare.
4. The judge reviewed all of the evidence and concluded that there was no truth in his claim that he feared that his life would be at risk on return and dismissed the appeal on all grounds.

The Grounds of Application

5. The appellant sought permission to appeal on the grounds that the judge had not founded his decision on an assessment of the objective evidence which was generally supportive of the appellant's claim. He had speculatively concluded that the son's medical condition could be managed in Libya and had only made passing reference to the country guidance case of FA (Libya - Article 15(c)) Libya CG [2016] UKUT 413 in finding that the appellant would not be at risk of indiscriminate violence in Baniwalid, the appellant's home area.
6. Permission to appeal was granted by Judge Alis on 7th September 2017. In granting permission, the judge referred to the country guidance case of ZMM (Article 15(c)) Libya CG [2017] UKUT 00263 promulgated on 28th June 2017 in which the Tribunal found:

“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 in the territory of that country or region, face a real risk of being subject to a threat to his life or person.”

Submissions

7. At the commencement of the hearing Mrs Pettersen accepted that, in the light of the country guidance it was the Secretary of State's position that cases involving Libyan nationals ought to be granted humanitarian protection. She otherwise defended the determination insofar as it dealt with the asylum claim.
8. Ms Logan submitted that the judge had erred in law because he had reached his conclusions without having proper regard to the background evidence. The judge had erroneously relied on the fact that the appellant had not been detained in the past as evidence that he would not be at risk in the future. It was wrong for the judge to hold the delay in claiming asylum against the appellant as he had a lawful right to be in the UK since he had student leave until October 2017.

Findings and Conclusions

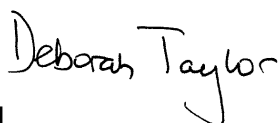
9. Mrs Pettersen very properly conceded that there was an error of law in this decision insofar as the country guidance case, which was not decided until after the decision was promulgated but was nevertheless a statement of the law as it was at the date of the hearing, has held that there is a generalised risk to Libyan citizens such that they ought to be granted humanitarian protection.
10. There is no merit in the challenge to the judge's conclusions in relation to asylum.
11. This is a thorough and well reasoned determination. The judge set out in detail what the background evidence was which he had considered from paragraphs 58 to 63 of the determination. There is no proper basis upon which it could be concluded that he did not have it in mind when he reached his credibility findings. The other points which she made amount to a mere disagreement with the decision. There is no mention in the grounds nor in the submissions of the principal reason why the appellant's credibility was damaged, namely that he returned voluntarily to Libya in 2014 and 2016 despite claiming substantial ill-treatment and a fear of return arising from detentions in 2011 and 2012.
12. The question of the judge's treatment of the child's skin condition is not relevant to the asylum claim.

Notice of Decision

13. So far as the decision on humanitarian protection is concerned, the judge erred in law and the following decision is substituted. The appeal is allowed on humanitarian protection grounds. So far as the asylum claim is concerned, his decision stands.

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

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
2017
Deputy Upper Tribunal Judge Taylor

Date 14 December