Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05623/2016

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination issued**
on 8 May 2017	**on 10 May 2017**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

[G A]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Katani & Co, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision by First-tier Tribunal Judge David C Clapham SSC, promulgated on 28 February 2017.

2. It is common ground that the Judge erred in law by purporting to dismiss appeals by family members which were not before him. That point is resolved at ¶15 below.

3. There are 2 grounds of appeal:

> '1. The judge erred by failing to refer to the email letter and attachment by the appellant's brother dated 20 December 2016 (pp. 12 – 14 appellant's inventory, pp.12 – 14 of written submission for the appellant. The letter corroborates the appellant's statement.
>
> 2. The judge has not exercised anxious scrutiny in considering article 8 of the ECHR. The oldest child of the appellant was born in the UK and has spent

> about 6.5 years in the UK. The appellant and his family speak fluent English. The appellant and his wife have good education background. Majority time … in the UK they either have valid leave or an outstanding asylum claim. They cause no harm to the public. It is disproportionate to remove the appellant.'

4. Having considered the grounds and submissions thereon, I find that neither ground discloses error on a point of law.

5. The email says:

> "… I wanna inform you that the situation in Libya has gone worse than before, our family is in danger and they killed our brother, our sister was shot in the leg and … is still in the hospital … don't try to Libya and find a way to stay in your place."

6. The judge said this at ¶34, relating to the cross-examination:

> "The appellant said that El Mehdi [his brother] has refugee status in Canada … It was pointed out that there was no statement or letter from El Mehdi explaining why he had been granted refugee status … The appellant was asked why his brother in Canada could not have provided a statement and … said that he did not know that was required."

7. And at ¶52, in explaining his conclusions:

> "… it is surprising there is not a statement from the Canada based brother explaining why he was granted refugee status and what the role was of the militia."

8. It was submitted that the email was not "properly assessed". That complaint is revealing in its vagueness.

9. I find it clear that the judge was aware of the materials, which included a copy of the grant of status and the email from the appellant's brother, but not a statement or a letter of any substance in relation to why the appellants' brother had been granted refugee status, or in relation to any support he could offer to the appellant's claims. No significant point of corroboration was elucidated from the email.

10. The judge at ¶52 was not overlooking the material from the appellant's brother, but pointing out the paucity of support it gives to his case.

11. Mr Winter said that ¶56 of the decision, on article 8, was accurate as far as it went, but failed to consider all relevant facts regarding the child's welfare, as required by the case law, and did not deal with the situation facing the child on return, set out in background materials. Mr Matthews submitted that a case based on conditions in Libya was not taken in the submissions in the FtT or in the ground of appeal to the UT. In any event, he said that the highly experienced judge would have in mind the well-known background situation. Mr Winter answered that the ground was broad enough to permit the argument; every feature favourable to the case based around the child should have been considered; the country materials were referred to in submissions for the appellant, although not in context of the child's best interests and

article 8; alternatively, a further ground should be permitted, or was obvious, having strong prospects of success.

12. Ground 2 is only reassertion of the case and disagreement with the proportionality assessment. It formulates no proposition of error on a point of law.

13. The situation to be considered was of the child returning as a member of the family, as the judge did.

14. No underlying case in respect of country conditions has been disclosed of such strength as to attribute error to the judge by overlooking materials and failing to perceive the obvious.

15. In respect of tribunal references PA/05615, 05610, 05629 & 05632/2016 relating to the appellant's wife and children, those cases were subject to notices of no valid appeal issued on 6 June 2016 and were not before Judge Clapham for decision. In so far as his decision purported to dismiss those appeals, it erred in law and is set aside.

16. In respect of the appellant's case under reference PA/05623/2016, the determination of the First-tier Tribunal **shall stand**.

17. No anonymity direction has been requested or made.

9 May 2017
Upper Tribunal Judge Macleman