



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

Appeal Number: PA/07631/2016

THE IMMIGRATION ACTS

**Heard at Bradford
On 28 July 2017**

**Decision & Reasons promulgated
On 29 August 2017**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

MMSA

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Khan (Counsel)
For the Respondent: Mr M Diwnycz (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal from a decision of the First-tier Tribunal (Judge Row hereinafter "the Judge") whereupon he dismissed the claimant's appeal against the Secretary of State's decision of 13 July 2016 refusing international protection.
2. This decision is an unusually brief one because there was, in fact, no dispute between the representatives before me as to what I should do. Before coming to that, though, I shall set out something of the relevant background.
3. The claimant is a national of Libya. His wife and four children, also nationals of Libya, have been treated as dependents upon his claim for international protection which he made on 13 January 2016.

4. The basis of the claim was that the claimant, if he were to have to return to Libya, would be at risk of persecution or serious harm due to his history as a supporter of the previous Gaddafi regime. Additionally, even if his actual support was not known, it was argued he would be perceived as a supporter of that regime. It was also contended that he could not take advantage of an internal flight alternative in Tripoli. It is relevant to note that he is from Sirte in Libya. He relied upon an expert report prepared by Dr A George which offered support for various aspects of his account.

5. The claimant had appealed to the First-tier Tribunal concerning the rejection of his claim. His appeal was heard on 8 December 2016. The Judge decided that low level supporters of the Gaddafi regime were not, in general terms, at risk. The Judge also decided that relocation to Tripoli would be available and would not be unduly harsh. The Judge also rejected arguments based upon Article 8 of the European Convention on Human Rights (ECHR).

6. When permission was sought four separate grounds of appeal were relied upon. It was contended that the Judge had erred in failing to adequately consider the expert report of Dr. George; had erred in his consideration of the prospects of relocation to Tripoli; had erred in assessing the safety of the claimant and his family's travel to Libya; and with respect to Article 8 had applied an incorrect legal test under the Immigration Rules (specifically paragraph 276ADE) and had conducted an incomplete assessment as to what would be in the best interests of the claimant's dependent children.

7. Mr Diwnycz (a senior and experienced Home Office Presenting Officer) did not seek to oppose the grounds of appeal before me. Accordingly, it is not necessary for me to say very much about them save that I do accept the Judge erred in failing to properly and fully consider the content of the report of Dr. George and in failing to adequately consider the prevailing difficulties from a humanitarian perspective in Tripoli prior to deciding relocation would not be unduly harsh.

8. Ms Khan urged me, my having indicated I would set aside the Judge's decision, to go on to remake the decision in the claimant's favour given current Country Guidance concerning Libya. Mr Diwnycz said that he was in agreement with that course of action. So, again, there was not any disagreement between the parties.

9. In the circumstances, and noting Mr Diwnycz's stance, it is appropriate for me to re-make the decision in the claimant's favour with respect to his claim for international protection and I do so.

10. In consequence of the above, and in remaking the decision in the Upper Tribunal, I allow the appeal of the claimant against the Secretary of State's decision of 13 July 2016. I do so on asylum grounds and on the basis of actual and perceived political opinion.

11. I have continued an anonymity direction which was made by the First-tier Tribunal. Nothing was said before me regarding anonymity but I have concluded it would be appropriate, in these circumstances to continue the status quo.

Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. I re-make the decision and in so doing I allow the claimant's appeal against the Secretary of State's decision of 13 July 2016.

I do so, on asylum grounds and, on the basis of the same facts and the same considerations, on human rights grounds under Article 3 of the ECHR.

Signed: Date: 29 August 2017

Upper Tribunal Judge Hemingway

Anonymity

Unless and until a tribunal or court directs otherwise, the claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to both the claimant and the Secretary of State. Failure to comply could lead to contempt of court proceedings.

Signed: Date: 29 August 2017

Upper Tribunal Judge Hemingway

**TO THE RESPONDENT
FEE AWARD**

No fee award is made.

Signed: Date: 29 August 2017

Upper Tribunal Judge Hemingway