



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

Appeal Number: PA/09227/2016

THE IMMIGRATION ACTS

**Heard at Stoke
on 8 November 2017**

**Decision and Reasons
promulgated
on 09 November 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**HS
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Fraczyk instructed by Genesis Law Associates Ltd

For the Respondent: Mr C Bates Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Hall promulgated on 29 March 2017.

Background

2. The appellant is a male citizen of Libya born on [] 1976 who entered the United Kingdom lawfully as a student in January 2013 with a Visa valid to 26 October 2013. The appellant returned to Libya in October 2013 and re-entered the United Kingdom on 27 March 2014 as a student with a Visa valid to 15 October 2014, which was extended to 30 January 2016. On 27 January 2016, the appellant claimed asylum which was refused by the Secretary of State on 21 July 2016. It is the appeal against that decision which came before the Judge.
3. The Judge considered the evidence with the required degree of anxious scrutiny and sets out findings of fact from [48] of the decision under challenge. The Judge accepted the appellant's claim to be a Libyan citizen and his immigration history and that an explosion occurred in 2015 for which ISIS claimed responsibility, as asserted by the appellant.
4. The Judge noted other family members live in different parts within Libya but found the appellant not entitled to grant of asylum or humanitarian protection and that his return would not breach articles 2 or 3 of the 1950 Convention.
5. The Judge thereafter considered the matter on human rights grounds both within and outside the Immigration Rules and found that any interference with an established protected right would be proportionate.
6. The appellant sought permission to appeal which was granted on 8 September 2017 on the basis it was said to be arguable that the Judge had erred in the application of the authority of *FA (Libya) CG [2016] UKUT 43* with particular reference to the question of whether the appellant is risk of Article 15(c) in Libya.

Error of law

7. The decision was promulgated on 29 March 2017. The current country guidance case relating to risk on return to Libya, *ZMM (Article 15 (c)) Libya CG [2017] UKUT 263*, promulgated on 28 June 2017, held that 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.
8. It is accepted that where a new country guidance decision is promulgated before a decision of the First-tier Tribunal is promulgated it is an error of law not to follow that new CG decision as the First-tier Tribunal remains seized of the case until promulgation – *NA (Libya) v SSHD [2017] EWCA Civ 143* refers. In this case, *ZMM* was promulgated after the date of promulgation of the First-tier decision.
9. In *SA (Sri Lanka) v Secretary of State for the Home Department [2014] EWCA Civ 683* it was held that there was no error of law by the Upper

Tribunal in deciding an asylum claim on the basis of the country guidance then in force. The correct remedy where the country guidance had changed was for an applicant to make further submissions under paragraph 353 of the Immigration Rules based on the new guidance.

10. In accepting that the Judge was unaware of the decision in *ZMM*, the issue that then arises is whether the evidence considered by the Judge was similar to that considered by the country guidance panel. It was not disputed that in light of the chronology the evidence was the similar making the issue whether the findings of the Judge on the basis of that evidence are sustainable. I find for the reasons set out in *ZMM* that they are not. I find that the appellant has made out arguable legal error in relation to the assessment of the humanitarian protection aspects of the appeal. I set the decision aside on this basis.
11. In light of the current country guidance decision I remake the decision by allowing the appeal on Article 15(c) grounds only.

Decision

12. **The Immigration Judge materially erred in law. I set aside the decision of the original Immigration Judge. I remake the decision as follows. This appeal is allowed on Article 15(c) grounds only.**

Anonymity.

13. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Judge of the Upper Tribunal Hanson

Dated the 8 November 2017