



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

Appeal Number: PA/10628/2016

THE IMMIGRATION ACTS

**Heard at Bradford
On 12 October 2017**

**Decision & Reasons Promulgated
On 27 October 2017**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**NESRIN MOHAMED ELHATAB
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Vaughan, NBS Solicitors

For the Respondent: Mr Diwncyz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant Nesrin Mohamed Elhatab was born on 23 July 1982 and is a female citizen of Libya. She entered the United Kingdom in September 2008 with valid entry clearance. She was granted further leave to remain as a Tier 4 Migrant. She left the country and returned to Libya thereafter applying and obtaining another visa which was valid until 30 April 2016.

Before that visa expired, she claimed asylum in the United Kingdom. By a decision dated 21 September 2016, the respondent refused the appellant's application for asylum. The appellant appealed to the First-tier Tribunal (Judge G R J Robson) which, in a decision promulgated on 20 March 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I find that the judge's decision should be set aside. However, I see little merit in the ground of appeal which asserts that the judge failed properly to take into account the distress shown by the appellant when giving evidence. The judge found the appellant's answers "unhelpful and vague". I have no reason to believe that the judge did not take into account the fact the appellant had become distressed and no submission appears to have been made to him at the First-tier Tribunal to the effect that the appellant's evidence should be considered in the light of her having become distressed. Indeed, at [32], the judge refers to the problems the appellant had when giving evidence. Quite properly, the judge satisfied himself that, notwithstanding her distress, the appellant was in a position to proceed to give her evidence. I am satisfied also the judge took into account all the evidence (including documentary evidence adduced by the appellant) in breaching his credibility findings. Those findings shall remain.
3. The problem with the judge's decision lies in his assessment of risk on return. The judge was aware [78] of the recent case of *FA (Libya Article 15(c)) Libya CG [2016] UKUT 413 (IAC)*. The judge was put on notice by the decision in that appeal and he should consider country material very carefully in assessing risk on return. His analysis, however, was limited to two short paragraphs [80 - 81] and makes reference only to the fact that the Tribunal in *FA* found that Tripoli was "relatively calm". Having examined the file, I observe that there was additional country material to which the judge does not appear to have made specific reference. Generally, the First-tier Tribunal Judge should not be expected to refer to and discuss each and every item of evidence or country material but, given the evident volatile and deteriorating security situation in Libya at the time of the First-tier Tribunal hearing, I consider that he should have looked beyond the country guidance case which, as the Upper Tribunal acknowledge, ultimately concluded that the First-tier Tribunal Judges consider each appeal very carefully. The Upper Tribunal has now produced country guidance in the form of *ZMM (Article 15(c)) Libya [2017] UKUT 263 (IAC)*. That country guidance was promulgated on 28 June 2017, that is, several months after Judge Robson's decision. Judge Robson can, of course, not be held responsible for failing to have regard to country guidance which did not exist at the date of his own decision but, as I have noted, much of the evidence before him was the same as that which was put before the Upper Tribunal in *ZMM*. In the circumstances, I find that the judge did err in law such that his decision falls to be set aside. *ZMM* makes it clear that no national of Libya is currently safe in that country. I therefore remake the decision allowing the appeal on humanitarian protection grounds.

Notice of Decision

4. The decision of the First-tier Tribunal promulgated on 20 March 2017 is set aside. The findings as regards the credibility of the appellant's account shall stand. I have remade the decision. The appeal is allowed on humanitarian protection grounds.
5. No anonymity direction is made.

Signed

Date 27 October 2017

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

No fee order.

Signed

Date 27 October 2017

Upper Tribunal Judge Lane