



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

Appeal Number: HU/10539/2016
HU/10311/2016
HU/10318/2016
HU/10319/2016
HU/10321/2016

THE IMMIGRATION ACTS

**At Field House
On 26 February 2018**

**Decision & Reasons Promulgated
On 28 February 2018**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

**K S AND OTHERS
(ANONYMITY ORDER CONTINUED)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND DIRECTIONS

1. The appellant and his family appealed the respondent's decision dated 11 April 2016 to refuse a human rights claim.
2. First-tier Tribunal Judge Obhi dismissed the appeal in a decision promulgated on 18 May 2017 because she considered that it would be 'reasonable' to expect the children to return to Libya even though "the country situation in some part of Libya is concerning" [30].
3. The Upper Tribunal published the country guidance decision in *ZMM (Article 15(c)) Libya CG* [2017] UKUT 263 on 28 June 2017. The Tribunal concluded:

“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.”

4. The appellant was granted permission to appeal to the Upper Tribunal in an order dated 30 November 2017.

5. Further to directions dated 22 February 2018 the respondent provided the following response under rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

“In light of the UT’s directions the SSHD has reviewed the detail of Judge Obhi’s determination and accepts that there are material errors in respect of the assessment of reasonableness under IR 276ADE(1)(vi) and with respect to the assessment of exceptional circumstances [IR Gen.3.2.].

In light of the case of *ZMM*, the SSHD also accepts that it would be unreasonable for the child Appellants to leave the UK and that there are either very significant obstacles to the integration of the adult appellants in Libya and/or there are exceptional circumstances within the Rules.

On that basis, the SSHD asks that the UT set aside the FtT decision and remake it, allowing the appeal of all Appellants in respect of the ground of appeal open to them, that being s. 84(2) NIAA 2002.”

6. In light of the decision in *ZMM* the First-tier Tribunal decision is unsustainable. Even though the appellant did not argue humanitarian protection grounds, the characterisation of the situation in Libya as “concerning” was clearly not sufficient in terms of assessing the situation that the children were likely to face if returned to Libya. Only a month later, the Upper Tribunal concluded that the level of general violence was such that it reached the threshold for humanitarian protection under Article 15(c) of the Qualification Directive.

7. The respondent accepts that the decision in *ZMM* amounts to a change in circumstances since the original decision was made to refuse the human rights claim. I am satisfied that, following the decision in *ZMM*, the First-tier Tribunal decision must be set aside and remade.

8. The circumstances in Libya are such that they would amount to ‘very significant obstacles’ to integration under paragraph 276ADE(1)(vi) of the immigration rules in the case of the two adult appellants. The children have lived in the UK for a continuous period of seven years. It is accepted that it would be ‘unreasonable’ to expect the children to leave the UK for the purpose of section 117B(6) of the Nationality, Immigration and Asylum Act 2002 (“NIAA 2002”) in light of the decision in *ZMM*. In the alternative, the decision in *ZMM* shows that the humanitarian circumstances in Libya

are sufficiently compelling to render a decision to remove the appellants disproportionate under Article 8 of the European Convention.

Direction

9. The parties shall notify the Upper Tribunal by **4.00pm today** whether they have any objection to the Upper Tribunal setting aside the First-tier Tribunal decision or to it remaking and allowing the appeal for the reasons set out above.
10. If there is no objection to this proposed course of action the parties do not need to attend the hearing on 28 February 2018 and this decision shall stand as the notice of decision.


DECISION

Subject to paragraph 9

The First-tier Tribunal decision involved the making of an error of law

The decision is set aside

The appeal is ALLOWED on human rights grounds

Signed: 
Upper Tribunal Judge Canavan

Date: 27 February 2018