



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02352/2017

THE IMMIGRATION ACTS

Heard at Columbus House, Newport
On 26 February 2018

Decision & Reasons Promulgated
On 20 March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

KRK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Rutherford of Counsel, instructed by Migrant Legal Project
For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against a decision of Judge of the First-tier Tribunal Woolley who in a determination promulgated on 10 April 2017 dismissed the appellant's appeal against a decision of the Secretary of State to refuse asylum.
2. The appellant is a citizen of Libya born on 20 September 1989. He claimed asylum on the basis that he had been a member of a particular militia group in Libya. His group had been captured by another group. He had however escaped from detention by the other group, fled to his brother's house and then left Libya. At the beginning of the appeal the judge was asked to adjourn the appeal so that psychiatric and expert reports could be obtained. The judge refused the adjournment on the basis that legal

aid had been refused on two occasions and the judge considered that the appeal could be properly and fairly determined without the reports. The judge moreover having heard evidence did not accept that the appellant's claim was credible. The judge therefore dismissed the appeal.

3. Although permission to appeal was refused in the First-tier permission was granted in the Upper Tribunal on grounds of appeal which referred to the decision of the Tribunal in ZMM (Article 15(c)) Libya CG [2017] UKUT 263 (IAC).
4. I indicated at the beginning of the appeal that I considered there was no error of law in the decision of the judge to refuse the application for an adjournment. Proper reasons for the refusal had been given and the decision of the judge on that issue was well reasoned.
5. I also stated that I considered that the judge was fully entitled to find the appellant's claim was not credible. The grounds of appeal on that point had argued that the judge had been wrong to place weight on the fact that the appellant had not, until the date of hearing indicated that he had suffered sexual abuse by his captors and that the judge was wrong to place weight on the late disclosure of that claim and ignore the reasons given for that late disclosure. Be that as it may, however, I consider that the appellant's claim of having escaped from detention while naked and having to climb a high wall covered with razor wire is not credible and I consider that the judge's findings of fact were open to the judge - there was nothing perverse in the decision.
6. However the country guidance case of ZMM does state in paragraph 94:-

"The violence in Libya has reached such a high level that there are substantial grounds 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."

That country guidance case therefore indicated that Libyans were entitled to the protection of Article 15(c) because of the situation in Libya.

7. The judge cannot be criticised for not applying a country guidance case which was not promulgated until after the determination in this case. However, as Mr Richards very properly conceded the fact is that the background material on which the Tribunal relied when reaching their conclusions in ZMM related to the period when the appellant's claim was made and determined in the First-tier. It is appropriate for me therefore, while concluding that the judge did not err when finding that the appellant's claim was not credible and in refusing the application for the adjournment, to set aside the judge's decision.
8. Having done so and with the agreement of all parties it is appropriate that I should, following the decision in ZMM, allow the appeal on humanitarian protection grounds.

Notice of Decision

The decision of the judge in the First-tier is set aside.

The appellant's asylum appeal is dismissed. This appeal is allowed on humanitarian protection grounds under Article 15(c).

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 17 March 2018



Deputy Upper Tribunal Judge McGeachy