



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03963/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester

On 5th January 2018

**Decision & Reasons
Promulgated
On 25th January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR ABDUERAOUF ABDOESALAM EBHIALIL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Pountney, legal representative

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

DECISION AND REASONS

1. The Appellant is a citizen of Libya, born on 22nd August 1980. The Appellant claims to have arrived in the UK on 10th January 2015 by direct plane from Libya. Prior to that he had had leave to remain as a Tier 4 (General) Student between 2011 and 2015. On 7th August 2015 the Home Office received notification that the Appellant was intending to enter into marriage and he claimed asylum on 28th August 2015. The Appellant's asylum claim was based on the fact that he had a fear of returning to Libya because of the general situation there and also feared he would be targeted as his wife was a British national. He had met his wife in

November 2014, had an Islamic marriage ceremony on 22nd March 2015, thereafter by way of a civil ceremony on 7th September 2015. The Appellant's application for asylum was refused by Notice of Refusal dated 7th December 2015.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Sharkett sitting at Manchester on 4th April 2017. In a decision and reasons promulgated on 2nd May 2017 the Appellant's appeal was dismissed on all grounds.
3. Grounds of Appeal were lodged to the Upper Tribunal on 16th May 2017. Those grounds contended that the Immigration Judge had applied the wrong legal test in respect of Article 8. In making his decision the judge had accepted that the Appellant had a genuine and subsisting marriage to a British citizen and that he was the biological father of a British child. He also found (at paragraph 107) that there would be a real risk to the Appellant's wife in Libya. However the judge had found that Article 8 was not breached because the Appellant could go to an undefined country and make an application to return back to the UK and that the judge had also found that the Appellant's daughter was "young enough to adjust to a temporary absence of her father". The grounds contend that the error in law was that the judge had taken no account of both the Immigration Rules and relevant Article 8 case law when coming to these findings.
4. On 5th September 2017 First-tier Tribunal Judge Hodgkinson granted permission to appeal. Judge Hodgkinson noted that the grounds argued that the judge had erred in her consideration of Article 8 with specific reference to the provisions of Section 117B(6) of the 2002 Act and in failing to conclude that there were insurmountable obstacles to family life with his wife continuing outside the United Kingdom. Judge Hodgkinson noted that there was no challenge to the protection element of the judge's decision and concluded that the grounds as pleaded disclosed arguable errors of law and granted permission on all grounds.
5. No Rule 24 response seems to have been filed. It is on the above basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed legal representative, Mr Pountney. The Secretary of State appears by her Home Office Presenting Officer, Mr Bates.
6. As a preliminary issue Mr Pountney refers me to an application to amend the Grounds of Appeal that was lodged at the Tribunal on 25th September 2017 and was chased up by letter dated 7th December 2017. That application has not been addressed. The basis for seeking to amend is for the change to country guidance to be considered and for permission to be granted on Article 15(c) grounds in addition to Article 8. It is open for party to seek to amend the grounds. I took the view the amended grounds represent fresh submissions that would be made if I find a material error of law. It is accepted by all parties that the First-tier

Tribunal Judge cannot be criticised for not taking account of a decision that clearly was not before her when she considered this appeal.

Submissions and Discussion

7. Mr Pountney relies on the Grounds of Appeal. He submits that the judge has failed to go through the appropriate considerations that would be necessary in this case and that the judge has found at paragraph 107 that the Appellant's wife would be at risk on return to Libya. She has then gone on to conclude (or indeed concluded prior to that at paragraph 104) that there were no very significant obstacles to the Appellant reintegrating into life in Libya or that his wife would not face insurmountable obstacles in following him there. He submits that there is a clear contradiction in these findings acknowledging that the Appellant's wife is British and that it is not reasonable to expect her to leave the UK and that the judge has not considered whether family life could continue in Libya. He submits that this is a clear error of law.
8. Mr Bates' approach is both pragmatic and helpful. He accepts that the finding that there are no insurmountable obstacles to the Appellant's wife travelling to Libya is a clear error although he submits that the judge did consider the Home Office policy and that a family split had been considered by the judge to be proportionate.

The Law

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of

evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

11. I agree with the submissions of both legal representatives. There is a clear error of law in the judge's reasoning, in particular in finding the Appellant's wife would be at risk at paragraph 107 and then concluding paragraph 104 that his wife would not face insurmountable obstacles in following her husband to Libya. I further accept the judge has not considered fully or properly whether family life can continue in Libya and that the case law is not supportive of the findings made by the judge. In such circumstances I set aside the decision of the First-tier Tribunal Judge and proceed to remake the decision.

Remaking of Decision

12. In remaking of the decision it is accepted by both Mr Pountney and Mr Bates that it is now appropriate to consider the submissions made by the Appellant's legal representatives in their amended Grounds of Appeal. The First-tier Tribunal Judge has dismissed the appeal pursuant to Article 15(c) in line with *FA (Libya: art 15(c)) Libya CG [2016] UKUT 00413 (IAC)*. On 3rd May 2017 the Upper Tribunal issued the new country guidance in *ZMM (Article 15(c)) Libya CG [2017] UKUT 00263 (IAC)*. That case is authority for the proposition

“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.”.

13. Such authority was clearly not before the First-tier Tribunal Judge as the case had not been published. However it is now clear that country guidance indicates in principle that Libyans are at risk of treatment contrary to Article 15(c) of the Refugee Qualification Directive 2004/83/EC on return to Libya. Consequently I find that following the country guidances now existing the Appellant would be entitled to humanitarian protection and consequently the Appellant's appeal is allowed.

Notice of Decision

The decision of the First-tier Tribunal Judge contained material errors of law and is set aside. On hearing the further submissions from the legal representatives of both parties the decision is remade allowing the appeal.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris