



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

Appeal Number: PA/08583/2016

THE IMMIGRATION ACTS

Heard at Manchester

On 13th December 2017

**Decision & Reasons
Promulgated**

On 22nd January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MRS ESAH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes, Counsel

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Libya born on 29th August 1984. She claimed asylum on 2nd March 2016. By Notice of Refusal dated 10th August 2016 her application was refused by the Secretary of State.

2. The Appellant lodged Grounds of Appeal. The appeal came before Judge of the First-tier Tribunal Malik sitting at Manchester on 16th February 2017. In a decision and reasons promulgated on 14th March 2017 the Appellant's appeal was dismissed on all grounds.
3. On 28th March 2017 Grounds of Appeal were lodged to the Upper Tribunal. On 13th July 2017 Judge of the First-tier Tribunal Froom granted permission to appeal. Judge Froom noted that there was no dispute over the Appellant's nationality namely that she was Libyan and referred to the recent authority of *ZMM (Article 15(c)) Libya CG [2017] UKUT 00263 (IAC)* the headnote of which states

"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."

Judge Froom and indeed those attending in front of me today acknowledged that that authority was not before the First-tier Tribunal Judge and no criticism can consequently be made of her.

4. It is on that basis that the appeal comes before me to determine whether there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by her instructed Counsel Mr Holmes. The Respondent appears by her Home Office Presenting Officer Mr Diwnycz.
5. I am considerably assisted in this matter by the concession made by Mr Diwnycz. He indicates that in the light of the recent authorities the Secretary of State is prepared to grant the Appellant humanitarian protection on the basis that her other appeals are dismissed. Mr Holmes agrees with this approach. It is I gather an approach that has been adopted in several other cases.
6. For the matter of completeness the judge materially erred in law in the First-tier Tribunal by failing to follow the country guidance given in *ZMM*. As I have mentioned above she cannot be criticised for this. I find that there is a material error of law, set aside the decision and remake the decision allowing the Appellant's claim on humanitarian protection grounds.

Decision

The decision of the First-tier Tribunal Judge contained a material error of law and is set aside. The decision is remade allowing the Appellant's claim on humanitarian protection grounds only.

The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and that order will remain in place.

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 10th January 2018

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 10th January 2018

Deputy Upper Tribunal Judge D N Harris