



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05962/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 3rd February, 2014

Determination Sent
On 20th February, 2014

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR AIMEN RA AM GWISHA

Respondent

Representation:

For the Respondent: Mr McVeety, Home Office Presenting Officer
For the Respondent: Mr Nicholson of Counsel, instructed by Greater Manchester Immigration Aid Unit

DETERMINATION AND REASONS

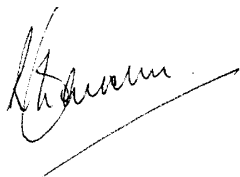
1. The appellant is the Secretary of State for the Home Department and in this determination I refer to the Secretary of State as the “claimant”. The respondent is a citizen of Libya, born on 26th March, 1983. He entered the United Kingdom by aeroplane at Heathrow Airport on 30th November, 2011, having used his own national passport, endorsed with a valid visa, from 12th November, 2012, until 12th May, 2013. The respondent claimed asylum some five months later on 9th May, 2013.

2. The claimant considered and refused the respondent's asylum claim and on 7th June last year decided to remove the respondent as an illegal entrant. The respondent appealed that immigration decision and his appeal was heard in Manchester by First-tier Tribunal Judge Holt on 17th October, 2013.
3. In her determination, promulgated on 25th October, 2013, Judge Holt allowed the respondent's asylum appeal and also allowed his humanitarian appeal and allowed his appeal under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
4. Dissatisfied with Judge Holt's decision, the claimant challenged the decision on several aspects. First, it was suggested that generally the judge had failed to provide adequate reasons for finding the respondent's claim to be credible and for finding that he would be at risk on his return to Libya. It was asserted on behalf of the claimant that the respondent had failed to demonstrate a sufficient knowledge of Taworghhan tribe during his asylum interview and the Tribunal had failed to provide adequate reasons as to why he was found to belong to the Taworghhan tribe.
5. The Secretary of State also suggested that the Tribunal had failed to give adequate reasons for relying on an expert's report as to the respondent's ethnicity when the expert failed to provide adequate sources in the report to support findings.
6. The grounds also suggested that the judge failed to give adequate reasons for finding an expert medical report relating to an injury the respondent claimed to have credible and suggested that the judge failed to consider whether there might be some other cause for the respondent's injury. It was also asserted that the respondent had delayed claiming asylum for five months and not given any credible reason and had also failed to give a credible explanation as to why he was able to obtain release from his detention.
7. I indicated to Mr McVeety that without having formed any firm opinion it appeared to me at first blush that the grounds failed to identify any error of law on the part of the judge. Mr McVeety acknowledged that he was in some difficulty.
8. I explained that I was more than happy to listen to his submissions and be persuaded otherwise and he asked me to consider what the judge had said in paragraph 54 concerning the respondent's accent. She said there:-

"Given the natural way in which the respondent gave his evidence I am satisfied that he spoke Arabic with an accent which was typical of someone from Tripoli, as claimed, but he said he would still stand out to locals in Libya as someone who had also had a Taworghhan accent as he was someone used certain words which were typically used by people from Taworghha."
9. Mr McVeety quite properly pointed out that there appeared to be no evidence recorded in the determination identifying the respondent's accent as being typically like someone from Tripoli. Mr Nicholson, who had represented the respondent before the judge, recalled that it was the respondent's own claim that he had an accent, because he had regularly spoken to others who did have an accent. Mr Nicholson suggested that what the judge had said at paragraph 54 was, in effect, the judge staying within the context of the credibility findings made by her his account that he would stand out as having an accent was credible.
10. I have carefully read the judge's determination in the light of the grounds. The judge made clear findings at paragraph 14 that the respondent was, until 2011, a low level supporter of the Gaddafi regime in Libya and a low level political activist as he claimed to be. Her reasons are clear, logical and supported by the evidence. At paragraph 15, the judge identified the need to make clear

findings as to the respondent's ethnicity and did so. She noted that while he had always claimed to be from the Taworghhan tribe, he had explained that he was brought up in Tripoli, although his father was of Taworghhan ethnicity and that members of the tribe historically supported the Gaddafi regime. Their loyalty was, as she points out, rewarded by the former regime offering construction projects and providing extra civil service facilities. Criticism is made of the judge for accepting the report of the expert as to the respondent's injury. At paragraph 16 the judge accepted the respondent's account of being imprisoned and tortured and gives her reasons. She found that the account was broadly consistent and that the respondent had not embellished his account. He clearly admitted that his detention lasted for a week and the medical report found that scars were consistent with the respondent's claim. The judge was satisfied that the respondent's account as to how he came to have a wrist scar was credible at paragraph 17 and at paragraph 21 she deals at some length with the respondent's delay in claiming asylum.

11. When the determination is read as a whole, I believe that it is a fair and thorough determination which deals with the claimant's concerns about the respondent's credibility and there is nothing in it which can properly be described as being perverse in the public law sense. The judge made clear findings on evidence which was placed before her. I believe that she was entitled to make the findings she did and I do not believe that the determination contains any error of law. I uphold the judge's decision.



Upper Tribunal Judge Chalkley