



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/03508/2015

THE IMMIGRATION ACTS

Heard at : IAC Manchester
On : 3 May 2016

Decision & Reasons Promulgated
On : 13 May 2016

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KHALIL ALI MOUSSA ALMANFOUD

Respondent

Representation:

For the Appellant: Ms C Johnstone, Senior Home Office Presenting Officer
For the Respondent: Mr L Brown, instructed by Greater Manchester Immigration Aid Unit

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Almanfoud's appeal against the

respondent's decision to refuse to vary his leave to remain and to remove him from the United Kingdom following the refusal of his asylum claim.

2. For the purposes of this decision, I shall refer to the Secretary of State as the respondent and Mr Almanfoud as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Libya, born on 29 December 1975. He arrived in the United Kingdom on 27 September 2013, having previously entered the UK in 2008 as a dependant on his wife's Tier 4 visa and returned to Libya in May 2012 after the revolution. He re-entered the UK with leave to enter as the dependant of his wife but applied, on 24 October 2013, to vary his leave to that of a refugee. His application was refused. He appealed against that decision. His appeal was heard by the First-tier Tribunal on 22 July 2015 and was allowed. The Secretary of State has been granted permission to appeal that decision.

The Appellant's Claim

4. The appellant was born in Tripoli, in Libya, and is married with three children, all born in the UK. He initially came to the UK with his wife who had been granted a Tier 4 student visa. He was opposed to the Gaddafi regime and whilst in the UK he attended demonstrations against the regime. He also contacted the cultural attaché at the Libyan Embassy in London protesting against Gaddafi. After the revolution, in May 2012, he returned to Libya with his family, intending to stay there permanently. He worked for the local council in the accounts department in his parents' village of Khomes and then started working as a volunteer for a charity or committee in the same building, in April 2013, supporting victims of criminal gangs, encouraging people to report crimes and gathering information about Gaddafi followers and passing the information on to certain organisations. He received telephone threats and threatening texts accusing him of being anti-Gaddafi, of having attended anti-Gaddafi demonstrations, and of being a traitor. In June 2013 he was shot at when driving his car with his family. He had stopped working for the committee by that time as a result of the threats made to his life. On 15 July 2013 he was kidnapped by an armed group and was held for a week and tortured before escaping. He went to stay with his relatives. He reported to the police and they took photographs of his injuries from the torture. He also heard that his house was burned down. He could not relocate to another part of Libya because the gangs were everywhere and he would be recognised wherever he went. He therefore left Libya and came back to the UK. He had no problem leaving Libya from Tripoli airport because he was protected by the revolutionaries.

5. The respondent considered that the appellant did not fall within the risk factors in AT and Others (Article 15c; risk categories) Libya CG [2014] UKUT 318 as he had no links to the Gaddafi regime and had an anti-Gaddafi profile. He had had no problem travelling to Tripoli airport from his home and leaving the country because he was protected by the revolutionaries and he could therefore safely return to his home area. In any event he was able to internally relocate within the country. The respondent did not accept the appellant's account of having attended anti-Gaddafi demonstrations in the UK and did

not accept his account of his kidnapping and detention. It was not accepted that the photographs of injuries and scars relied upon by the appellant constituted evidence supporting his account of the cause of the injuries. The respondent considered that the appellant would not be at risk on return to Libya, that he was not entitled to humanitarian protection and that his removal would not breach his human rights.

6. First-tier Tribunal Judge Dearden, in his decision of 31 July 2015, found that the appellant had given a truthful account of his experiences in Libya and accepted that he had suffered persecution in the past. He found that the appellant could not safely relocate to another part of Libya. He also found that the situation in Libya had deteriorated to an extent that it now fell within Article 15(c) of the Qualification Directive and thus required departure, in the appellant's case, from the country guidance in AT. He allowed the appeal on asylum and human rights grounds.

The Secretary of State's appeal

7. The respondent sought permission to appeal Judge Dearden's decision on the grounds that he had failed to provide adequate reasons for departing from the country guidance in AT, in particular given that the evidence relied upon by the judge reflected the evidence that was before the panel in the country guidance case.

8. Permission was granted on 1 September 2015 by the First-tier Tribunal on the grounds raised.

9. At the hearing before me Ms Johnstone accepted that the judge's credibility findings were not challenged and relied upon the grounds on which permission had been granted. Mr Brown submitted that the evidence before the judge was not the same as that before the panel in the country guidance case but was up-dated evidence which justified a departure from the country guidance. He submitted that there were two issues before the judge, namely the specific risk on return to the appellant and the possibility of internal relocation, and the general risk under Article 15(c). The grounds had focussed only upon the latter. Ms Johnstone, in response, referred to the last paragraph of the respondent's grounds. She conceded that there had been more up-to-date background information before the judge.

10. I advised the parties that, in my view, there was nothing in the grounds justifying the setting aside of the judge's decision. My reasons for so concluding are as follows.

Consideration and findings.

11. It is the appellant's claim that he had been actively opposed to the Gaddafi regime, and that as a result of his known anti-regime activities he had been threatened when working for a committee in Libya, had been shot at whilst driving his car, that he had been kidnapped and tortured before escaping and that his house had been burned down. All of this, he claims, was due to the fact that he was considered to be a traitor by the militia and armed gangs supporting the Gaddafi regime. Whilst noting the respondent's views about

the credibility of the appellant's account, and whilst taking some issue with parts of the appellant's account, Judge Dearden nevertheless placed significant weight upon a medical report from the Medical Foundation in concluding that the appellant's account was a truthful one. The respondent did not take issue with that finding and Ms Johnstone confirmed that the positive credibility findings made by the judge were not challenged. Neither was there any issue taken with the judge's implied finding that the appellant was at risk on return to his home area. That was a matter which I specifically raised at the hearing and it was clear that that was not a matter under challenge.

12. What the respondent was challenging was the judge's finding in regard to internal relocation, but in the context of his findings on the general situation in Libya for the purposes of Article 15(c). Mr Brown submitted that, in challenging the judge's findings in that regard, in particular his departure from the country guidance in AT, the respondent had failed to separate the two distinct issues of the appellant's own particular circumstances as regards internal relocation and the general country situation for the purposes of Article 15(c). I agree that that is the case, although it seems to me that the judge conflated the issues himself to an extent. Nevertheless, I would agree with Mr Brown that there was sufficient evidence before the judge to justify his conclusion that the circumstances in Libya had deteriorated to such a level, since the country guidance in AT, that the appellant had demonstrated that he could not safely or reasonably relocate to another part of the country.

13. Whether or not the judge was entitled to conclude that the evidence before him justified a departure from the guidance in AT in relation to Article 15(c) in general terms is not material, given that that was not the basis upon which he allowed the appeal. Indeed he made no finding on humanitarian protection. What the judge did was to consider the background evidence before him and the expert report in the context of the appellant's particular circumstances, as he noted at the penultimate paragraph of page 11 of his decision, and to conclude that it was not safe or reasonable for the appellant and his family to relocate to another part of the country. At page 11, he specifically quoted that part of the expert report referring to remnants of the Gaddafi regime existing throughout Libya and engaging in persecutions and assassinations of those that they believed to be responsible for the regime's defeat. Clearly, that was particularly pertinent to the appellant's situation. As such, it is clear that the judge did not allow the appeal on generalised grounds, based on evidence already considered in the country guidance, as the respondent's challenge appears to suggest, but he gave reasons for concluding that the appellant had made out his claim based on his own individual circumstances.

14. Accordingly I find that the judge did not err in law as the grounds assert. He undertook a detailed and careful assessment of the evidence and the existing country guidance and reached a conclusion that was entirely and reasonably open to him on the basis of that evidence.

DECISION

15. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The Secretary of State's appeal is dismissed and the decision of the First-tier Tribunal to allow the appellant's appeal stands.

Signed
Upper Tribunal Judge Kebede