



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

Appeal Number: AA/03517/2015

THE IMMIGRATION ACTS

Heard at Manchester

On 7 March 2016

**Decision & Reasons
Promulgated
On 21 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**M M K
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hussain (Solicitor) Lei Dat and Baig Solicitors
For the Respondent: Ms Johnston, Senior Presenting Officer

DECISION AND REASONS

1. This matter comes before me pursuant to permission having been granted by Upper Tribunal Judge Knowles QC dated 4 August 2015. The appeal relates to a decision by First-tier Tribunal Judge Birkby promulgated on 18 May 2015. The Judge at the First-tier Tribunal had dismissed the appeal on asylum, humanitarian protection and human rights grounds.

2. The Appellant's grounds of appeal can be summarised as follows:
 - (1)The Judge failed to give adequate reasons for finding that the situation in Libya had not changed to such a degree that the conclusions reached in the Country Guidance case were no longer effective;
 - (2)The Judge had failed to engage properly with the country material submitted;
 - (3)There were no reasons for dismissing the evidence. For example the Human Rights Watch report;
 - (4)The Country Guidance case was heard in November 2013 and matters had moved on significantly since then.
3. At the hearing before me Mr Hussain said that there had been a material error of law in respect of the assessment of Humanitarian Protection. He said he relied on the detailed grounds of application which had been submitted to both the First-tier and the Upper Tier. The Judge had said that there had been no change in the situation since the Country Guidance decision but that was wrong. It was submitted that the Judge had made contradictory findings. At paragraph 48 the Judge had said there was indiscriminate violence but then at paragraph 50 had said there was not. The Country Guidance situation was very different at that time.
4. Mr Hussain said that his second point was that the Judge had not engaged with the evidence in any event. There were a number of reports that the Judge was provided with such as UN Reports, an Amnesty Report and a Human Rights Watch Report. These reports had post-dated the Country Guidance. He submitted it was pertinent material evidence. It was necessary for the Judge to deal with it. Mr Hussain said he was not seeking to appeal on asylum grounds and clarified that the appeal was not based on human rights grounds either. The appeal related to humanitarian protection. He said the decision ought to be set aside and for there to be a rehearing.
5. Ms Johnston said that she would be brief. She said she relied on the Rule 24 Reply. There was nothing irrational about the findings at paragraphs 47 and 48 of the Judge's decision and therefore there was no material error of law. She said that was all she wanted to say.
6. Mr Hussain was invited to reply but declined the offer.
7. I had reserved my decision.
8. It is clear that the Judge has said he had considered all of the evidence at paragraph 38. He listed some of the background evidence reports at paragraph 48 of his decision. The difficulty which arises is that there is no real analysis or findings in respect of those

reports at paragraph 50 of the decision or elsewhere. In my judgment although the Judge was entitled to conclude that there was no sufficient change since the Country Guidance he needed to set out why that was so. It is of course the position that there has to be good reason to depart from Country Guidance. In this case the Appellant's real ground of appeal is that there were good reasons put forward as to why the Country Guidance ought not to be followed. Those good reasons were in the form of the various reports which were part of the background evidence presented to the Judge by the Appellant. The reports were all since the decision in the Country Guidance.

9. In my judgment there is a material error of law. The Judge has failed to set out with adequate reasoning why the numerous reports submitted by the Appellant ought not to have led to his appeal succeeding in respect of humanitarian protection.
10. Mr Hussain made it clear that the appeal is based on humanitarian protection issues only.
11. I therefore disagree with the brief Rule 24 from the Respondent and with the brief oral submission made by Ms Johnston. In my judgement there is a material error of law.
12. Accordingly I allow the Appellant's appeal. There shall be a rehearing at the First-tier Tribunal. The rehearing shall be restricted to humanitarian protection issues only. The asylum and human rights aspect of the appeal remain dismissed. In any event there was no appeal in respect of those aspects. The findings of fact made by the Judge at the First-tier Tribunal shall also remain. In particular noting paragraph 46 of the Judge's decision. The only issue that the rehearing will consider is whether there is a sufficient risk of indiscriminate violence to this Appellant with findings already made.

Notice of Decision

The decision of the First tier Tribunal Judge contains a material error of law. I set it aside to the extent referred to above. There shall be a rehearing at the First-tier Tribunal in respect of humanitarian protection issues only with preserved findings of fact.

An anonymity direction is made.

Signed

Date: 7 March 2016

Deputy Upper Tribunal Judge Mahmood