



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

Appeal Number: AA042762015

THE IMMIGRATION ACTS

**Heard at : IAC Manchester
On: 23 May 2016**

**Decision & Reasons
Promulgated
On: 26 May 2016**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**N J
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Schwenk, instructed by Broudie Jackson Canter
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Libya born on [] 1985, arrived in the United Kingdom on 1 December 2013 and claimed asylum. His claim was refused on 20 February 2015. He appealed against that decision and, on 1 June 2015, his appeal was dismissed in the First-tier Tribunal. Permission was granted on 3 July 2015 to appeal that decision. At an error of law hearing on 31 March 2016,

I found that the First-tier Tribunal Judge had made errors of law in his decision in his findings on risk on return and that, to that extent, the decision had to be set aside and re-made by the Upper Tribunal.

The Appellant's claim

2. The appellant claims to be an Amazegh tribe member, born in Al Jamil near the Tunisian border. His family moved to Tripoli when he was 6 months of age. From March 2011 he worked for the internal security in Libya under Colonel Gaddafi. He claims that his situation became very dangerous after the Gaddafi regime was overthrown. The rebels had entered Tripoli in August 2011 and he was threatened by members of his own tribe who were fighting against the government. He claims that his tribal members went to his home on 24 August 2011 and enquired about his whereabouts and the whereabouts of his brother Tariq who worked in the army. His family then left Tripoli and travelled to Al Jamil where they were protected. His brother H, who was working for a sports TV channel in Tripoli, was captured by a rebel faction and handed over to the Jadu tribe and his family learned that he was detained, tortured and killed on 28 February 2012. The appellant then tried to leave Libya but was refused a visa and eventually used false documents to leave. He came to the UK and claimed asylum in December 2013. In March 2014 his family told him that their tribal leaders had reached an agreement with the Jadu and that they were able to return to Tripoli. He then applied for an assisted voluntary return to return to Libya. However 20 days later his home in Tripoli was attacked by militia, his brother T was kidnapped from the family home, his family were kicked out of their home and their home was burned down. He then cancelled his application for voluntary return. He feared being killed by the militia if he returned to Libya.

3. The respondent, in refusing the appellant's claim, did not accept that he was from the Amazigh tribe and did not accept that he had worked for the internal security department in Libya. His account of the kidnapping of one brother and the death of the other brother was not accepted. The respondent considered that the appellant could in any event relocate to another part of Libya. It was not accepted that he was at risk on return.

4. The appellant appealed against that decision and the appeal was heard on 12 May 2015 by First-tier Tribunal Judge Atkinson. Judge Atkinson rejected submissions made on behalf of the appellant that the country guidance in AT and Others (Article 15c; risk categories) (CG) [2014] UKUT 318 was out of date in so far as it related to Article 15(c) and indiscriminate violence and did not accept that the appellant was entitled to subsidiary protection under Article 15(c). Whilst he accepted that Tripoli international airport was closed, he noted that there were limited commercial departures and that other airports remained open and he found that the appellant did not face a serious risk of harm if returned to Libya through Tripoli. The judge accepted the appellant's account of his tribe and his claim as credible but did not accept that he was at risk of persecution. He considered that the majority of the population in Libya had worked for, or been associated with, the Gaddafi regime and that he was

not at risk on the basis of his and his brother's work for the regime. He found that the appellant had failed to adduce specific evidence relating to his individual circumstances showing that he was at risk of persecution. He did not consider that the evidence relating to his brother's death in 2014 was a sufficient basis for concluding that he was at risk, since his brother was taken in the course of a general attack by the militia and there was no evidence that the family was specifically targeted. Accordingly he dismissed the appeal on all grounds.

5. Permission was sought by the respondent to appeal that decision to the Upper Tribunal on the grounds that: the judge's finding as to the safety of the proposed method and route of return to Libya was not supported by the evidence; and that the judge had conflated the appellant's accounts of his two brothers and had failed to deal with the evidence of the appellant's brother Tariq's kidnapping.

6. Permission was granted on both grounds on 3 July 2015.

7. At the error of law hearing I heard submissions from both parties and was advised by Mr Schwenk that the appellant's brother T had since been killed. I found the judge's determination to be materially flawed, for the following reasons:

"9. It is clear from his findings at [47] that the judge confused the evidence of the appellant's two brothers, dealing with them as one person who had died in 2014. It seems that, at [47], whilst referring to the relevant year as 2014 rather than 2012, he was considering the position of H since it was that brother whom he recorded at [17] as having been taken by rebel forces and subsequently killed. On the basis of his finding that H was taken in the course of a general attack by militias, the judge concluded that the appellant had failed to show that the family had been specifically targeted. However the judge does not appear to have considered the position of the appellant's other brother T, whom he had stated had been kidnapped in 2014. Given that the appellant's claim was that the militia were specifically interested in him and his brother T as a result of their work for the Gaddafi regime, and that the militia had previously visited their family home seeking them both, such an omission was material, in light of the risk factors in AT and on that basis alone the judge's conclusion on risk on return cannot stand.

10. I also find an error of law lies in the judge's findings at [35] in regard the returnability of the appellant through Tripoli airport. It seems to me that the judge's findings in regard to the appellant's ability safely to return to Libya are cursory and do not include an adequate consideration of the background information, particularly as reliance is placed on the evidence of limited departures from the airport but without any consideration given as to how that applies to non-commercial arrivals.

11. Accordingly, for the reasons given above, I find that errors of law have been established in the Tribunal's decision and that it must be set aside and re-made. There is no challenge to the judge's positive credibility findings and the re-making of the decision will therefore be with respect to the question of risk on return. Both parties wish to adduce further evidence in regard to the current situation in Libya and further evidence is to be adduced with respect to the death

of the appellant's brother T. The appeal will accordingly be listed for a resumed hearing before the Upper Tribunal."

Appeal hearing and submissions

8. The appeal then came before me on 23 May 2016. A further bundle of evidence, including the death certificate of the appellant's brother T, had been produced by the appellant but there was no further evidence from the respondent. Mr Harrison advised me that enforced returns to Libya were not taking place owing to security concerns for British escorts.

9. It was agreed by both parties that the only issue was risk on return and that the appellant's account had otherwise been accepted by the First-tier Tribunal Judge, with no challenge by the respondent to the positive credibility findings made by the judge. It was agreed that, whilst Judge Atkinson had been found to have erred by failing to consider the position of the appellant's second brother T, that was only with regard to the question of risk on return and there was no dispute about the claim that T had been kidnapped.

10. I summarised the relevant facts as follows: the appellant had worked for the internal security in Libya under Colonel Gaddafi; he had been threatened by members of his own tribe who were opposed to Gaddafi and was thus seen as a traitor by his own tribe; his tribe members formed part of the militia currently in control in Libya; his brother T had been in Gaddafi's army; in August 2011 members of his tribe in the militia came to his house looking for him and his brother T and were therefore interested in both of them; T was kidnapped from the family home in March/April 2014 and the family home was burned down; T has since been killed, in November 2015; there are no enforced returns to Libya due to security concerns for escorts; the main international airport in Tripoli is closed. Both parties agreed that those were the unchallenged facts.

11. I asked Mr Harrison, in light of those facts, and given that AT and Others (Article 15c; risk categories) (CG) [2014] UKUT 318 allowed for consideration of individual circumstances, what submissions he would wish to make as why the appeal should not simply be allowed. He advised me that he had no submissions to make. I accordingly allowed the appeal.

Consideration and findings

12. In light of the developments in the proceedings as stated above, I do not consider it necessary to provide lengthy findings, but conclude as follows.

13. In dismissing the appellant's appeal, Judge Atkinson considered that the appellant had failed to adduce specific evidence relating to his individual circumstances showing that he was at risk of persecution. He considered that his brother H's demise occurred in the course of a general attack by militias and that that did not, therefore, provide any basis for finding that the appellant would be at risk himself. However Judge Atkinson did not consider the position of the appellant's other brother T.

14. I therefore consider the appellant's circumstances in the light of the position of his brother T. It is accepted that the militia include members of the appellant's own tribe who perceived him and his brother T to be traitors because of their work within the Gaddafi regime. It is accepted that the militia came looking for the appellant and T owing to their roles within the Gaddafi army and internal security and that T was kidnapped by the militia. The appellant's claim that his brother T has since been shot and killed is not challenged.

15. Although the country guidance in AT refers to those at risk being former high ranking officials within the intelligence services of the Gaddafi regime and those with an association at senior level with that regime, and in certain circumstances to family members of those at such a high level, it seems to me that it does not necessarily preclude those at a lower level of association who could nevertheless establish that their individual circumstances would lead to an adverse risk, particularly given the deterioration in the security situation in Libya since the country guidance was issued. It seems to me, therefore, that someone who had already attracted the adverse attention of the militia and who was considered to be a traitor to their own tribe, whose tribe formed part of the militia groups, and whose brother had been killed under such circumstances, would reasonably likely be at risk of suffering the same fate. In the circumstances, it seems to me that there is clearly reason to believe that the appellant would still be of adverse interest to the militia and would be at risk on that basis if he were returned to Libya.

16. In the circumstances I find that the appellant has been able to demonstrate, to the lower standard of proof, that he would be at risk of persecution if returned to Libya and his appeal is accordingly allowed on asylum grounds and under Article 3 of the ECHR. As such he is not entitled to humanitarian protection.

DECISION

17. The making of the decision by the First-tier Tribunal involved the making of an error on a point of law. The decision has been set aside. I re-make the decision by allowing the appellant's appeal on asylum and Article 3 human rights grounds.

Anonymity

The First-tier Tribunal made an anonymity order. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed

2016

Date 26 May

Upper Tribunal Judge Kebede