



**The Upper Tribunal
(Immigration and Asylum Chamber)
AA/05975/2015**

Appeal number:

THE IMMIGRATION ACTS

Heard at Birmingham

Decision & Reasons

On February 23, 2016

Promulgated

On March 2, 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

S S A A D

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Howerd (Legal Representative)

For the Respondent: Mr Richards (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant is a Libyan national. The appellant had been studying in the United Kingdom and he re-entered the United Kingdom on August 8, 2014 as a Tier 4 student. On October 8, 2010 he claimed asylum. He was interviewed on January 16, 2015 but his claim was refused on all grounds on March 18, 2015 and a decision was taken to remove him from the United Kingdom by way of directions under paragraph 10A of schedule 2 to the Immigration Act 1971.
2. The appellant appealed on April 2, 2015 against that decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. The matter was heard by Judge of the First-tier Tribunal Birk (hereinafter referred to as “the Judge”) on July 20, 2015 and in a decision promulgated on July 28, 2015 she refused his application on all grounds.
4. The appellant applied for permission to appeal on August 7, 2015 submitting the Judge had erred. Permission to appeal was refused by Judge of the First-tier Tribunal Saffer on August 19, 2015. Permission to appeal was renewed to the Upper Tribunal and on September 18, 2015 Upper Tribunal Judge Finch granted permission to appeal. She found no merit in grounds one, three or four of the grounds of appeal but found it arguable the decision was not adequately reasoned (ground two).
5. The matter came before me on the above date and I heard submissions from both representatives. At the conclusion of those submissions I reserved my decision.
6. The First-tier Tribunal made an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I extend that order.

SUBMISSIONS

7. Mr Howerd submitted the Judge had erred and referred to paragraph [18] of the decision. The adverse findings did not go to the core of his claim and were unfairly held against him especially as the Judge found at paragraph [39] he was a vulnerable witness. The Judge made findings between paragraphs [21] and [28] that were inadequately reasoned especially in paragraphs [21] and [24]. Even if the Judge found his account to lack credibility she was still required to carry out a specific assessment of his claim in considering whether he fell into a risk category. He submitted that the Judge failed to do this and this amounted to an error in law.
8. Mr Richardson relied on the Rule 24 response dated October 8, 2015. The Judge made it clear that her findings in paragraph [18] were not central to her decision but were factors she took into account as she concluded the appellant’s approach to his evidence was unsatisfactory. This decision was fully reasoned and it was clear the Judge considered all of the evidence and reached a decision based on all of the evidence. The Judge then considered his position having regard to the country guidance decision of AT and others (Article 15c; risk categories) Libya CG [2014] UKUT 00318 and found there was no cogent or compelling to depart from it. There was no error in law.
9. I reserved my decision.

DISCUSSION AND FINDINGS

10. In considering whether there has been an error I have had regard to my record of proceedings, the grounds of appeal-the rule 24 response and submissions.
11. The appellant came here as a student initially in December 2013. He returned to Libya on June 28, 2014 before returning back on August 8, 2014. The Judge carefully set out the appellant's case between paragraphs [4] and [10] of her decision and then summarised the refusal letter. Her assessment of the evidence commenced at paragraph [18] and continued through to paragraph [28].
12. Mr Howerd has argued that the Judge erred by giving inadequate reasoning whereas Mr Richardson asserts the decision was fair and does not contain a material error.
13. Paragraph [18] was brought to my attention by Mr Howerd but on any reading of that paragraph it cannot be argued that the Judge decided the appellant's claim. The Judge made it clear in two places that the findings in that paragraph did not go to the core of the appellant's claim but were factors the Judge felt could be taken into account in assessing his overall claim. I see nothing wrong with that approach as the Judge's role was to assess credibility. Within that paragraph the Judge explained what concerned her and why and in those circumstances I find no merit in Mr Howerd's first submission.
14. The second challenge related to the Judge's reasons or lack of reasons for her findings in paragraphs [19] to [28]. At paragraph [19] the Judge accepted he carried out work for a charity group but just not for any specific group. She also accepted at paragraph [20] that when he visited in June 2014 he felt people had changed both their approach and attitude and that some of them were members of Ansar Al-Sharia, a Salafist Islamist militia group. At paragraph [21] she considered his actions and rejected his claim to have openly distributed leaflets and she explained why she rejected this claim. She considered at paragraphs [22] and [23] his claim that he had received a threatening letter and then gave her reasons why this part of his claim was rejected. At paragraph [24] she considered his evidence about others who had received a similar letter but having considered the claim she then gave reasons for rejecting his claim. The Judge then considered the remaining aspects of his claim and gave her reasons for rejecting the same.

15. In Dasgupta (error of law – proportionality – correct approach) [2016] UKUT 00028 (IAC) the Tribunal reminded us that in order to be an error the Court would have to find “..... the facts found are such that no person acting judicially and properly instructed as to the relevant law could come to the determination under appeal.”
16. I am satisfied that the numerous findings made were not only open the Judge but were also properly reasoned.
17. The final challenge lay in the Judge’s approach to AT. The Judge approached this aspect of the appeal in paragraph [28]. She could only consider whether the appellant fell into a risk category after she had made her findings. The Judge carried out a specific examination of his claim and having made those findings followed the guidance given in AT and concluded he did not fall into a risk category. She then considered whether the new evidence would enable her to depart from that decision and at paragraph [33] concluded it did not.
18. This was a well written decision that carefully considered all aspects of the appellant’s appeal. The Judge rejected substantial parts of his claim and reached a conclusion that was clearly open to her.

DECISION

19. There was no error in law. I uphold Judge of the First-tier Tribunal Birk’s decision and I dismiss the appeal.

Signed:



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed:



Deputy Upper Tribunal Judge Alis