



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

Appeal Number: AA/06465/2015

THE IMMIGRATION ACTS

**Heard at Glasgow
on 5 January 2016**

**Determination issued
14 January 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MOHAMED IBRAHIM OSMAN SHELLY

Respondent

Representation:

For the Appellant: Mr M Matthews, Senior Home Office Presenting Officer

For the Respondent: Mr S Winter, Advocate, instructed by Drummond Miller,
Solicitors

DETERMINATION AND REASONS

1. The parties are as described above, but the rest of this determination refers to them as they were in the First-tier Tribunal.
2. The appellant is a citizen of Libya, born on 19 October 1996. No anonymity direction has been requested or made.
3. The respondent refused the appellant's claim to recognition as a refugee for reasons explained in a letter dated 31 March 2015. First-tier Tribunal

Judge Kempton allowed the appellant's appeal by a decision promulgated on 29 September 2015.

4. The SSHD appeals to the Upper Tribunal on grounds headlined that the judge "makes contradictory findings and fails to resolve a conflict of evidence relating to the same." The particular grounds are that Dr George (an expert on Libya whose report was produced for the appellant) was unable to find evidence that the appellant's grandfather was (as the appellant claimed) Head of Intelligence Services under the Gaddafi regime, or in charge of suppressing the rebellion in Bani Walid in 2011. Dr George could not understand why the appellant might be targeted rather than other family members. The judge had not found the appellant wholly credible and characterised [part of] his claim as a "cock and bull story". The judge's finding that the appellant's family were close supporters of Gaddafi, bringing him within the protection category identified in headnote (6) of *AT and Others* CG [2014] UKUT 318, was therefore contradictory and unsupported.
5. It is convenient here to cite the relevant part of the headnote in *AT*:
"Former regime members and associates
...
 - (3) Having regard to the generally hostile attitude of society to the former regime, the following are, in general, at real risk of persecution or Article 3 ill-treatment on return to Libya: -
 - (a) former high ranking officials within the intelligence services of that regime;
 - (b) others with an association at senior level with that regime.
 - (4) As a general matter, the closer an individual was to the centre of power within the former regime, the more likely that the individual will be able to establish a risk of persecution or Article 3 ill-treatment on return.
 - (5) The majority of the population of Libya either worked for, had some association with, or has a member of the family who worked for or had an association with the Qadhafi regime. Such employment or association alone is not sufficient to establish a risk of persecution or Article 3 ill-treatment on return.
 - (6) In general, family members of those described in (3) and (4) above are not at risk of persecution or a breach of their protected rights on return. It is possible, however, that an individual will be able to establish such a risk but this will need to be demonstrated by specific evidence relating to the individual's circumstances. Mere assertion of risk by association as a family member would not be sufficient without fact-specific evidence of the risk to that particular family member."
6. Mr Matthews submitted that *AT* was replete with references to the need for fact specific assessment of a case of this nature, for example at paragraphs 80, 101 and 141-146. Paragraph 146 states:

“We do not rule out the possibility that an individual will be able to demonstrate such a risk but that would have to be demonstrated by a highly specific individual assessment of that person’s circumstances. Mere assertion of risk by association as a family member would not be sufficient without fact specific evidence of the risk to that particular family member. The clear evidence is that risk arises because of actual or perceived support for the previous regime. A family member may be able to establish risk on this basis, but the *mere* fact of being a family member would not in our judgment be sufficient.”

7. Mr Matthews argued that the appellant’s case was based only on assertion of risk through his maternal grandfather. The supporting evidence was simply not there. The judge misunderstood the report by Dr George, who had been unable to confirm the family relationship, or that the individual referred to had the profile claimed. Any conclusion by Dr George which tended in the appellant’s favour was based on the appellant’s account being established, a finding not made by Dr George or by the judge. It was notable that Libya is a highly patrilineal society, and there was no explanation as to why risk should arise to this appellant through a link on his mother’s side. The appellant said that the individual claimed to be his grandfather was involved in suppression in Bani Walid in 2011, but there was evidence of such activity only in 1993. There had been no such fact finding as might justify the judge’s conclusion, and the case therefore required a fresh hearing.
8. Mr Winter submitted that read in a common sense way and in full, the determination did not reach contradictory findings. Dr George had been able to establish that the person to whom the appellant referred did exist, and was a senior figure in the regime, even if he had not the Head of Intelligence Services or in charge of the repression in 2011. While the judge had her doubts about the appellant’s account, and did not accept it in its entirety, she did accept that the individual identified in Dr George’s report is the appellant’s grandfather. That was the only sensible interpretation of paragraph 27 and of the final outcome of the case.
9. I indicated that the SSHD’s challenge would not be upheld.
10. The judge might have been more specific in stating her conclusion that the appellant failed to establish that his grandfather was either Head of Intelligence Services or involved in the repression of 2011. She might also have been more specific about accepting that this individual nevertheless was a senior member of the regime. The evidence to that effect produced by the appellant and confirmed in Dr George’s report is clear.
11. The only sensible reading of paragraph 27 and the rest of the determination is that the judge found the appellant’s family connection to that individual was established. There was a good deal of evidence, including photographic evidence, to show the link.
12. The judge had good reason to doubt the *full* extent of the appellant’s claims; but it is significant to note that the particular finding of a “cock and

bull story” goes to the allegation of being known as his grandfather’s favourite (paragraph 29), not to everything he says. The judge also thought that the appellant’s understanding of his grandfather’s role might have been an exaggeration in his own mind rather than a pure invention (paragraph 30).

13. The judge finds that the appellant’s grandfather’s support for the regime up to 2011 is established, although not his exact role (paragraph 31). She goes on to deduce a real risk to the appellant as a young person with little experience of living independently, unsure of his family’s current whereabouts and unable to return to his home area or elsewhere. She correctly links her conclusions to the guidance in *AT* (paragraph 37).
14. The findings reached by the judge are not contradictory, on a full and fair reading of the decision.
15. The case may have only just reached the level of specificity required to succeed in terms of *AT* but I do not think the respondent’s grounds and submission succeed in showing that the judge’s “logic and decision” to be “with respect, perverse or irrational” (paragraph 9 of the grounds).
16. The decision of the First-tier Tribunal shall stand.



Upper Tribunal Judge Macleman

13 January 2016