Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/11380/2014

THE IMMIGRATION ACTS

Heard at North Shields	**Decision and Reasons Promulgated**
On 5 February 2016	**On 1 March 2016**
Prepared on 8 February 2016	

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

A. B.
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Brakaj, Solicitor, Iris Law Firm
For the Respondent: Mr Kingham, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Libya, who entered the UK using a Libyan passport and entry clearance as a student which had been granted to him on 13 February 2013. He claimed asylum upon arrival, but the Respondent refused to vary his leave, curtailed his leave so that he had none, and in addition made a decision to remove him from the UK on 14 March 2013.

2. The Appellant duly appealed against those immigration decisions and his appeal was heard by First Tier Tribunal Judge Cope, and then dismissed in a decision promulgated on 13 June 2013 which roundly rejected as untrue the Appellant's account of his experiences. His appeal rights against that decision were duly exhausted.

3. The Appellant subsequently made a fresh claim to asylum, relying upon a deterioration in the situation within Libya, although his account of his personal circumstances and experiences remained the same. That fresh claim was refused by the Respondent on 8 December 2014, and a further decision to remove was made in consequence. The Appellant duly appealed against those immigration decisions, and his appeal was heard by First Tier Tribunal Judge Fox, and dismissed in a decision promulgated on 8 May 2015.

4. The Appellant's application to the First Tier Tribunal for permission to appeal was granted by First Tier Tribunal Judge Andrew on 1 June 2015.

5. The Respondent filed a Rule 24 response dated 15 June 2015 in which she pointed to the findings made by Judge Fix which she argued were entirely adequate to dispose of the appeal. Neither party applied to introduce further evidence. Thus the matter comes before me.

The grounds of appeal

6. The grant of permission was limited to the complaint that the Judge had not give adequate consideration to the objective evidence relied upon by the Appellant concerning the deterioration in the situation within Libya. The other complaints raised in the grounds were rejected as being based upon misrepresentations of the content of the decision.

7. Neither the decision itself, nor the grounds which Ms Brakaj had drafted herself, nor the grant of permission, make any reference to the relevant recent country guidance decision of AT and Others (Article 15c; risk categories) Libya CG [2014] UKUT 318. That is of concern, given that this country guidance decision was promulgated on 14 July 2014, some nine months before the hearing before Judge Fox.

8. In those circumstances I invited Ms Brakaj to address the question of whether Judge Fox's decision was consistent with that country guidance, in the light of the findings of primary fact that he and Judge Cope had made. She accepted that it was, and that in the light of the guidance contained in AT a claimant could not succeed if the Tribunal were merely considering the risks he would face upon return as a fit single man, even if he had exited Libya illegally. She also accepted that the guidance to be found in AT also disposed of the substance of the complaint that Judge Fox had not considered Article 15(c), which

was in any event without merit because the decision records that he did [37]. She accepted therefore that the sole ground upon which permission had been granted could not succeed, unless she could renew the complaint that Judge Fox made an error of law in failing to take as his starting point the Appellant's claim to be a member of the Zintan clan/tribe, which she argued before me had been a positive finding made in the Appellant's favour by Judge Cope, although in the grounds of appeal she had drafted she had argued that Judge Cope had failed to resolve this issue.

9. Although three other complaints were raised in the grounds as originally drafted, there was never any merit in them as set out in the decision granting limited permission to appeal, and Ms Brakaj did not seek to advance them further before me.

10. First the claim that Judge Fox had overlooked the photographs which showed a ruined house, which the Appellant said was his family home. Contrary to the claims made in the grounds these photographs were specifically referred to by Judge Fox, and taken into account [17].

11. Second Judge Fox was well aware that Tripoli airport was closed at the date of the hearing and made specific reference to it [18 21]. He did not overlook the matter. As he explained in his decision nothing turned upon the closure of that airport since no removal directions had yet been set, and no route of return had been specified by the Respondent. Benghazi airport remained open and it was a safe point of return; AT.

12. Third, if the Appellant's brother had entered the UK since the hearing before Judge Cope, then as Judge Fox noted, that did beg the obvious question as to why the Appellant had not offered him as a witness of fact to corroborate his account, and as a source of material new evidence that was not before Judge Cope. Ms Brakaj's explanation for this was that the Appellant had not told her of the presence of his twin brother in the UK prior to his cross-examination, and she had no explanation to offer for his conduct in that respect. The existence of a twin brother, and his economic activities, was relied upon by the Appellant as an explanation for why his claim to have been in hiding in Libya was not consistent with the entries recorded in the bank statements for his own bank account that he had produced in support of his entry clearance application [Cope 43]. That was a matter that Judge Fox was perfectly entitled to consider as part of his assessment of the weight to be given to the Appellant's evidence, and the grounds offer no arguable complaint to the approach that Judge Fox took to this evidence in paragraphs 19 and 20 of his decision.

13. Ms Brakaj's argument before me in relation to the Appellant's claim to be a member of the Zintan clan/tribe, was twofold. First she argued quite simply that Judge Cope had accepted this claim to be true;

although in the grounds she had argued the contrary position, arguing that Judge Cope had failed to resolve the issue of clan/tribe membership. Second she argued, as set out in her grounds, that the Appellant had consistently advanced his claim to Zintan clan/tribe membership, and that he had first advanced it as part of his application for a student visa, and that he had therefore done so at a time when he could not have recognised the significance that clan/tribe membership would later assume in the context of safe return to Libya.

14. Both limbs to this argument fail. First I am satisfied that when Judge Cope's decision is read fairly, and as a whole, it must be read as a rejection as untrue of the Appellant's claim to be a member of the Zintan clan/tribe. That rejection was merely a part of the overall rejection of the Appellant's evidence as untrue. The fact that Judge Cope then went on to deal with the matter in the alternative, posing the question of whether it would make a difference if the Appellant were truly Zintan, does not alter the rejection.

15. Second it is plain that the Appellant has not given the consistent account upon which Ms Brakaj's argument is based, and that the details he has given of his family have altered significantly for no obvious reason other than at least one version was untrue. Although Judge Cope and Judge Fox make no reference to the fact, the Appellant had made two applications for entry clearance as a student. The first was made unsuccessfully on 11 November 2012 [D12]. The second was made successfully on 30 December 2012. The family details he gave in each of those applications are quite different. Thus he gave a different date of birth, a different maiden name, and a different place of birth, for his mother between the two applications. In short he appears to have identified a completely different woman as his mother in the second application. In addition he gave a different date of birth, and a different place of birth, for his father in the two applications, although the name remained the same. As Ms Brakaj accepted, no explanation for his decision to do so has ever been offered.

16. Nowhere in the VAF is an applicant asked to identify their clan or tribe. Ms Brakaj accepted that her argument that the Appellant had consistently claimed to be Zintan was based upon the place of birth given for his parents. Since he had not, that argument entirely falls away. In any event, a place of birth is not of itself the conclusive evidence of clan or tribal membership that Ms Brakaj appeared to seek to elevate it to.

17. In the circumstances there was no new evidence placed before Judge Fox that would have allowed him properly to revisit Judge Cope's adverse findings of primary fact, and to remake them in the Appellant's favour. It is clear that both entry clearance applications were before Judge Fox, even if they were not before Judge Cope. If

their existence, and the changes in the details offered for his parents therein, had been brought to the attention of Judge Fox (and I am not satisfied that they were) I am satisfied that it would not have been evidence that would have indicated to him that he should revisit any of Judge Cope's adverse findings of fact, and remake any of them in the Appellant's favour. On the contrary this material would simply have reinforced in his mind the reliability of Judge Cope's rejection of the Appellant's evidence as unreliable, both generally, and specifically in relation to the claim to be a member of the Zintan clan/tribe. Thus Judge Fox was perfectly entitled to approach the evidence in the way that he did, and he gave entirely adequate reasons for his decision.

Conclusion

18. In the circumstances I am not satisfied that any of the challenges advanced in the grounds of appeal have any arguable merit. I am not satisfied that the Appellant has established that there is any material error of law in the Tribunal's decision promulgated on 8 May 2015 that requires the decision to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 8 May 2015 did not involve the making of an error of law in the decision to dismiss the appeal that requires that decision to be set aside and remade. The decision to dismiss the appeal is accordingly confirmed.

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Deputy Upper Tribunal Judge JM Holmes
Dated 8 February 2016