Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers:
PA/06794/2016

PA/06792/2016

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 20 June 2017	**On 21 June 2017**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

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ANONYMITY DIRECTION MADE

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr Greer, Broudie Jackson Canter Solicitors
For the respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any

proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. The first appellant is the mother of the second appellant. They are both citizens of Libya. They claim that if returned to Libya they face a real risk of serious harm for reasons relating to the imputed political opinion, including social media posts by the first appellant's son (and the second appellant's brother), A. They also claim to be entitled to humanitarian protection because of the internal armed conflict taking place in Libya.

2. These claims were considered and rejected in a detailed First-tier Tribunal decision dated 6 December 2016. The First-tier Tribunal made several adverse credibility findings and dismissed the appeals.

3. In succinct grounds of appeal the appellant's solicitors submitted that the First-tier Tribunal applied an outdated country guidance decision and failed to take into account the voluminous bundle of updated background evidence.

4. The First-tier Tribunal granted permission to appeal observing that although it made very comprehensive credibility findings, it was an arguable error to fail to apply FA (Libya: Article 15(c)) Libya CG [2016] UKUT 413 and to apply AT (Article 15(c); risk categories) Libya CG [2014] UKUT 318.

Hearing / error of law

Approach to country guidance

5. Mr Harrison conceded that it was a clear error of law to apply AT at [48] and to fail to consider FA at all. FA was clearly available within the appellant's bundle and referred to within the skeleton argument relied upon by the appellant's solicitors. This error is a significant one because FA expressly replaced AT in respect of the assessment of the Article 15(c) risk and highlighted the numerous changes in Libya since November 2013, when AT was heard.

Robinson obvious errors in relation to credibility assessment

6. I indicated a provisional view that the First-tier Tribunal decision should be set aside completely and remitted to the First-tier Tribunal to be remade. This is because I

identified two errors of law not pleaded within the grounds of appeal, applying the 'Robinson obvious' principle derived from R v SSHD ex p Robinson [1997] EWCA Civ 3090 – see below. Mr Harrison entirely accepted that these constituted obvious errors of law going to the heart of the credibility assessment.

7. First, the error in applying outdated country guidance to the assessment of risk also gives rise to an error of law in the assessment of the plausibility of the account. The First-tier Tribunal's rejection of the account before her was partly based on a rejection of the plausibility of aspects of it – see [39-42]. At [35] the First-tier Tribunal indicated that "*careful consideration*" had been given to the evidence including the objective evidence and

> "it is in the context of the information contained within the objective evidence that I have considered the first and second appellant's account and their fear of returning to Libya."

8. In support of their claim to face persecution in Libya, the appellants relied upon an incident in August 2014 when four men raided their apartment looking for A, as well as A's detention in May 2015 for reasons relating to social media posts against the Misrata militia and Islamic brotherhood. Given the timing of these claimed events, it is surprising that there has been no acknowledgment on the part of the First-tier Tribunal that there have been numerous changes in Libya since AT considered the background evidence in November 2013. There has therefore been no clear consideration of the plausibility of the account provided within the correct context – the state of affairs in Libya in 2014-2015. Little confidence can be gained from the First-tier Tribunal's indication at [35] that all the objective evidence was considered when it is plain from [48] that outdated country guidance was applied. The country background evidence was to be found in the same bundle as FA. FA has not been considered and there is no specific reference to any item of background evidence.

9. This error is demonstrated to be a material one within the First-tier Tribunal's findings of fact. For example, the First-tier Tribunal did not regard it to be plausible that the four men would have acted in the manner they did when they visited the family's apartment or that the first appellant was unable to articulate clearly who she feared. This fails to take into account the outbreak of political violence after the June 2014 elections which led to the

"*loss of central government control over much of the country's territory and the emergence of rival administrations based in Tripoli*" – see the Libya CIG dated June 2016 at 6.1.1.

10. Second, the First-tier Tribunal's approach to the Immigration and Refugee Board of Canada's decision dated 2 November 2015 granting A refugee status contains obvious errors of law. The Board's decision is a comprehensively reasoned document. Having heard A give evidence, he was entirely believed and found to be a credible witness. The Board had documentary evidence corroborating his claim in the form of screenshots from his computer detailing the social media posts. This documentary evidence was not available to the First-tier Tribunal, yet adverse inferences are drawn from this failure to provide corroborative evidence, seen and accepted by the Board. The First-tier Tribunal rejected the claim that A was detained in Libya and attached little weight to the Board's acceptance that he was. It is difficult to see why the First-tier Tribunal did not approach this decision in a similar manner to a reasoned First-tier Tribunal decision involving a family member in accordance with Devaseelan principles i.e. the Board's decision is a starting point for the consideration of the appellant's claims, but it is not determinative.

11. The reasons offered for attaching little weight to the Board's decision are also irrational. The First-tier Tribunal appears to reject this claim because it was not mentioned in the first appellant's 'preliminary information form' but has failed to take into account that the focus of the relevant answer appears to be upon the reasons that led the first appellant to leave Libya in 2014. The first appellant raised the 2015 incident at her asylum interview. The First-tier Tribunal also failed to take into account the evidence provided within the second appellant's asylum interview and statement regarding A's activities.

12. The First-tier Tribunal has erred in law in its approach to the evidence set out above. The errors I have focussed upon are sufficiently wide-ranging and fundamental to lead me to the view that the conclusion on credibility is vitiated by errors of law and unsafe. The decision must be remade entirely and de novo.

Remittal

13. As set out above, Mr Harrison accepted that the First-tier Tribunal's credibility assessment is infected by two material errors of law and needs to be remade entirely, in the context of the most up to date country background evidence and country guidance.

14. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal.

Decision

15. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.

16. The appeal shall be remade by the First-tier Tribunal de novo.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
20 June 2017