



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

Appeal Number: PA/12343/2016

**THE IMMIGRATION ACTS**

**Heard at Liverpool**

**On 5<sup>th</sup> February 2018**

**Decision & Reasons  
Promulgated  
On 28<sup>th</sup> February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**[F G]**

**~~(ANONYMITY DIRECTION NOT MADE)~~**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Olorunfemi (Solicitor)

For the Respondent: Mr C Bates, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Libya born on [ ] 1981. The Appellant has an extensive immigration history which is set out at paragraph 16 of the Secretary of State's detailed reasons for refusal. The Appellant's application for asylum was based upon a fear that if returned to Libya his life would be at risk due to the present country situation and that he had a claim pursuant to Article 8 of the ECHR that would be breached if removed as he had been in the UK for over twelve years. His application was refused by the Secretary of State by notice dated 24<sup>th</sup> October 2016.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Henderson sitting at Bradford on 24<sup>th</sup> May 2017. In a decision and reasons promulgated on 13<sup>th</sup> June 2017 the Appellant's appeal was allowed on asylum grounds and on human rights grounds.
3. On 22<sup>nd</sup> June 2017 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those grounds tended that rather than considering the Appellant's individual circumstances the First-tier Tribunal Judge appeared to conclude that anyone returning to Libya at the current time regardless of their circumstances, would be at risk of an Article 15(c) breach by simple virtue of their presence. It was submitted that that contradicts the Secretary of State's latest Country Policy and Information Note on Libya. Further it was contended that the First-tier Tribunal Judge had fallen into error in failing to resolve his ultimate decision with the substantial findings on the Appellant's general incredibility.
4. On 27<sup>th</sup> September 2017 Judge of the First-tier Tribunal Boyes granted permission to appeal. There does not appear to have been any rule 24 response lodged in this matter.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed solicitor Mr Olorunfemi. The Secretary of State appears by her Home Office Presenting Officer Mr Bates. I note that this is an appeal by the Secretary of State. For the sake of continuity throughout the appeal process the Secretary of State is referred to herein as the Respondent and [FG] as the Appellant.

### **Submissions/Discussions**

6. Mr Bates accepts that the Grounds of Appeal are limited and that the Secretary of State's challenge is to the grant by way of a Convention reason. He takes me to paragraph 38 and the Appellant's claim that his family are religious and to the acceptance by the judge therein when he states:

"I accept however that having spent thirteen years in this country he regarded himself as a westernised individual and that the events of the last few years in Libya have served to undermine that his lack of religious beliefs and his westernised lifestyle are no longer something which will be tolerated in the current conditions in Libya where tribal, religious and political delineations are all important."

Mr Bates points out that nowhere within the determination does the Appellant state that he is secular and he fails to see how the judge has drawn that specific conclusion.

7. He accepts that the judge has in fact pre-empted the most recent authority of *ZMM (Article 15(c)) Libya CG [2017] UKUT 263 (IAC)* and the latest Country Policy and Information Note on Libya published in January

2018 and that consequently following that authority it is likely that my decision will be the same but he still wishes to point out that the judge has still made a finding under a Convention reason when he should not.

8. Mr Olorunfemi points out that the Appellant's credibility was assessed at paragraphs 28 and 29 and that the judge found him credible and therefore that he qualified for refugee status and that he was entitled to reach his conclusions.

### **Country Guidance**

9. This is now to be found in *ZMM (Article 15(c)) Libya CG [2017] UKUT 00263 (IAC)*. That country guidance of the President of the Upper Tribunal is authority for the following proposition:

"The violence in Libya has reached such a high level that substantial grounds are shown for believing that a returning civilian would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to a threat to his life or person."

### **The Agreement**

10. Mr Bates indicates that if there is a withdrawal by the Appellant's legal representative seeking to find the Appellant's appeal should be allowed for a Convention reason and he is prepared to concede that the Appellant should, following *ZMM*, have his appeal allowed on the basis of humanitarian protection. He points that this will have no effect of time for which an Appellant's grant is made.
11. On that basis, and on the request of Mr Olorunfemi that this is recorded in writing, he is prepared to accede to such a request and to withdraw his Convention appeal on the Secretary of State's concession that the Appellant's appeal from the Entry Clearance Officer is allowed pursuant to Article 15(c). It seems to me as a matter of law that is the correct approach to this case and I endorse it.

### **Notice of Decision**

12. It being conceded by the Secretary of State that the Appellant's appeal succeeds following country guidance authority pursuant to his claim under Article 15(c) of Directive 2004/83 the Appellant withdraws his Convention appeal from the Notice of Refusal of the Secretary of State and the appeal is allowed pursuant to the Appellant's claim under Article 15(c) of Directive 2004/83.

No anonymity direction is made.

Signed

Date 23 February 2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 23 February 2018

Deputy Upper Tribunal Judge D N Harris