



IAC-TH-WYL-V1

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

Appeal Number: AA/04694/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 28 October 2014**

**Decision & Reasons  
Promulgated**

**On 6 October 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APLEYARD**

**Between**

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

Appellant

**and**

**MR MAHMUD HAY SADEK AHMED ABUARGOUB  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Kandola, Home Office Presenting Officer

For the Respondent: Mr B Hoshi, Counsel

**DECISION AND REASONS**

1. This is a respondent's appeal but I shall henceforth refer to the parties in the original terms detailed in the determination of Judge of the First-tier Tribunal Buckwell following a hearing which took place at Hatton Cross on 12 August 2014.

2. The appellant, born on 1 April 1981, is a citizen of Libya.
3. He made application for asylum, Humanitarian Protection and a human rights claim. His application was refused in a decision of the respondent dated 25 June 2014 which set removal directions for his home country of Libya.
4. The appellant appealed against that decision and on 12 August 2014 his appeal was heard by Judge Buckwell who dismissed it on asylum grounds but allowed it on both Humanitarian Protection grounds and with reference to Articles 2 and 3 of the European Convention on Human Rights.
5. On 9 September 2014 Judge of the First Tier Tribunal Reid gave reasons for allowing the respondent's application for permission to appeal. They state:
  - "1. The respondent seeks permission to appeal, in time, against a decision of the First-tier Tribunal (Judge Buckwell) who, in a determination promulgated on 27 August 2014, allowed the appellant's appeal against the respondent's decision dated 25 June 2014 to refuse the appellant asylum.
  2. The grounds argue *inter alia*: the judge made a material error of law by failing to give adequate reasons for finding that he could depart from country guidance case law **AT & Others (Libya) CG [2014] UKUT 318 (IAC)**; the judge wrongly extended the British government's advice to its own citizens to Libyan nationals without reference to specific evidence; the judge did not give adequate reasons for finding that Article 15c of the QD had been breached; the judge gave weight to immaterial matters including the practicalities of how the appellant could be returned to Libya.
  3. It is arguable that the judge failed to give adequate findings for his decision to depart from the recent country guidance set out in **AT & Others**.
  4. The grounds disclosed an arguable error of law."
6. The appellant originally based his application for international protection on the basis of his then opposition to President Gaddafi, who at the time of his application was the President of the Republic of Libya, known as the Great Socialist People's Libyan and Arab Jamahiriya. The appellant stated that he had been present at demonstrations in London against the former regime in Libya, subsequent to his arrival in the United Kingdom as a visitor.
7. By the time the appellant's appeal was heard by Judge Buckwell the basis of his claim to be a refugee was agreed, by his Counsel, to no longer subsist following the demise of the former President Gaddafi. The appeal hearing proceeded on the basis that the appellant then asserted, with respect to country conditions and that returning individuals, including the

appellant, to Libya, would be a violation of the requirements of Article 15c of the Qualification Directive and, in parallel, would breach the human rights of the appellant with reference to Articles 2 and/or 3 of the European Convention on Human Rights. This appellant also relied on Article 8.

8. Today Mr Kandola relied on the written grounds seeking permission to appeal. He submitted that the judge was not entitled to depart from existing country guidance and particularly AT & Others (Article 15c: risk categories) Libya CG [2014] UKUT 000318 (IAC) which he emphasised was only heard by the Tribunal in November 2013 being a matter of months before this appellant's appeal was heard by Judge Buckwell on 12 August of the following year. He suggested that the judge could rightly be criticised for wrongly departing from country guidance and that in so doing he had failed to provide substantial grounds for that departure. He acknowledged that the judge properly found that Articles 2 and 3 "stood or fell" with the claim for Humanitarian Protection and argued that too great an emphasise had been placed on travel recommendations made by the British government which were directed at British citizens considering going to Libya.
9. Mr Hoshi began by placing no reliance whatsoever on a Libya travel advice document that his instructing solicitors had forwarded to the Tribunal in a letter of 20 October 2014. He submitted that for a judge to depart from existing country guidance there had to be clear and cogent evidenced based reasons for so doing. These can be clearly gleaned from the determination of Judge Buckwell whose decision has to be looked at alongside the original skeleton argument that Counsel provided for the hearing within the First-tier Tribunal and which is referred to at paragraph 59 of Judge Buckwell's determination. The background evidence he considered was not just aimed at travellers to Libya and research clearly identified a deteriorating situation by the time that this appeal was heard by Judge Buckwell many months following consideration in the Upper Tribunal of the country guidance appeal. Not only did the judge have a proper basis for departing from country guidance but it was also incumbent on all to be aware that the country guidance system was not meant to be inflexible and that Libya is a good example of where such flexibility is required given its ever changing country situation.
10. The material on the Tribunal's file includes the skeleton argument of Counsel for the Appellant referred to in the determination of Judge Buckwell. Therein, amongst other things, there is reference to the security situation in Libya deteriorating in the weeks preceding the date of the instant appeal to such an extent that the Tribunal is entitled to depart from the findings of **AT & Others** on the issue of indiscriminate violence. The security situation is sufficiently serious that, on return to Libya, the appellant would be at direct risk of a serious and individual threat to his life and person by reason of indiscriminate violence in a situation of international and internal armed conflict. The skeleton argument then

goes on to refer the judge to country background materials within the appellant's bundle.

11. Those materials have clearly been considered by Judge Buckwell in coming to the conclusions he reached. I do not find the judge has erred as asserted by the respondent. The findings that he came to were open to be made on the evidence that was before him and adequate reasoning has been provided for the conclusions reached.

12. I appreciate that it may have been wiser for the judge to set out more fully the material that he relied on within the determination itself without, making reference to it via the appellant's Counsel's skeleton argument. For example at paragraph 59 of his determination Judge Buckwell states:

"59. In recent weeks and months the country situation in Tripoli has deteriorated significantly. The particulars in that respect are set out in paragraphs 20 onwards in Ms Jones' skeleton argument. It is also relevant to state, as she indicates at paragraph 19 of her skeleton, that the findings made by the Upper Tribunal had to be based on evidence as to country circumstances as presented to the Upper Tribunal by 22 November 2013."

13. Nonetheless it is clear from the determination that the material within the appellant's bundle which persuaded Judge Buckwell to allow the appeal for the reasons that he did had properly been taken into account by him.

14. In all the circumstances it was open to him to conclude that the country circumstances had deteriorated so significantly since the previous November that by returning this appellant to Libya it would constitute a breach of Article 15c of the Qualification Directive. The judge founded his decision on reliable evidence within the appellant's bundle which he refers to at paragraph 64 of his determination before concluding that the country situation in Libya has significantly altered this year. The judge has referred to specific evidence of indiscriminate violence in Libya and the Foreign and Commonwealth Office report mentioned within the grounds seeking permission to appeal is by no means the sole material he has taken into account and it cannot be said, as asserted in the grounds, that he has given weight to "immaterial matters".

15. This is a careful and detailed determination where Judge Buckwell has given cogent and sustainable reasons which were fully open to him on the evidence for concluding that the country situation in Libya had altered to such an extent that for this individual appellant the respondent was unable to rely on **AT & Others**.

16. The judge was entitled to depart from country guidance as he had been shown, on the evidence before him, that circumstances within Libya had changed in a material way which resulted in a different decision being made. The judge has given proper reasons for coming to the conclusions that he did. I appreciate the proximity in time between this appellant's

hearing and the making of the country guidance within **AT & Others**. However, the situation in Libya is plainly fluid and it is clear that Judge Buckwell has applied flexibility to accommodate the individual circumstances of this appellant's case taking into account changes, fresh evidence and other circumstances.

17. The conclusions of Judge Buckwell were open to be made in all the circumstances.

### **Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

No anonymity direction is made.

Signed

Date 4 November 2014.

Deputy Upper Tribunal Judge Appleyard