



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/01498/2013

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 24 February 2015**

**Determination Promulgated
On 17 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**ELMAHDI MUKTAR E BENALI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Karnik counsel instructed by Jackson and Canter

For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Gladstone after a hearing on 19 March 2013 which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 23 February 1983 and is a national of Libya.
4. The Appellant arrived in the United Kingdom on 5 December 2008 with a student visa valid until 30 September 2010.
5. On 3 December 2012 the Appellant applied for asylum on the basis that he would be killed on return by the family of a girl with whom he had had a sexual relationship outside marriage as her family belonged to a large and powerful tribe. He also complained that he would be at risk from the general country situation.
6. On 29 January 2013 the Secretary of State refused the Appellant's application giving a number of reasons:
 - (a) It was not accepted that the Appellant would be of adverse interest to his former girlfriend's family on return as he had lived and worked in Misrata for a year when her family know of their relationship and they had not found him.
 - (b) The Appellant's claim in the asylum interview that after a summons was issued in 2008 he had no further problems was inconsistent with the documentary evidence submitted by his father.
 - (c) The Appellant's claim in the screening interview that his father had worked for the Gaddafi regime as a translator is inconsistent with his claim in the asylum interview that he had no problems because of his father's work particularly given that his father had continued to work as a translator in Libya after Gaddafi's fall.
 - (d) The letter considered the circumstances in which Article 3 of the ECHR could be engaged in a situation of armed conflict by reference to Article 15(c) of the Qualification Directive. It acknowledged that there was sporadic fighting in Libya but stated that it did not extend to the whole country and was isolated to areas of major economic or socio political importance. They stated that fighting was not at such a level generally or a material part of it that the Appellant faced a real risk of serious harm solely by being present as a civilian.
 - (e) The Appellant was not at risk as a failed asylum seeker.

- (f) The Appellant's credibility was damaged by issues arising under section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004 in particular his failure to claim asylum promptly.
- (g) There is sufficiency of protection as the charges against the Appellant were dropped for lack of evidence.
- (h) The Appellant could relocate to Misrata.

The Judge's Decision

7. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Gladstone ("the Judge") dismissed the appeal against the Respondent's decision. The Judge set out in her decision at some length the law, the documentary evidence before her, the oral evidence and the submissions of both parties and found:

- (a) There had been a significant delay in claiming asylum without a satisfactory explanation and while this was not determinative of credibility she took this into account.
- (b) There were contradictions in the documentary evidence before her and she did not find it reliable.
- (c) There were inconsistencies between the Appellant's witness statement and his evidence in court.
- (d) His claim now that he feared return because his father worked for the Gaddafi regime was inconsistent with his account in the asylum interview that neither he nor his family had any problems after the regime fell because of his father's work and the fact that his family continued to live in Tripoli suggested that they had no problems.
- (e) The Judge concluded that the Appellant would not be at risk for perceived political problems.
- (f) Given her general findings of credibility, the lack of any other reliable documentary evidence, his confused evidence about the summons, his reference to incidents in 2006 in his witness statement that he had not mentioned in his asylum interview, the fact that he was not located in Misrata although he claimed the girl's family were looking for him she did not accept that the Appellant had the relationship he claimed and concluded he had fabricated the account in order to claim asylum.

- (g) On the facts as found she concluded that the Appellant was not entitled to asylum, humanitarian protection and would not breach his rights under Article 3. She considered the general country situation and did not find that this would subject the Appellant to risk on return noting that his family continued to live in Tripoli.
8. Grounds of appeal were lodged arguing that the Judge had erred in her approach to humanitarian protection as the protection afforded by the Qualification Directive and Article 15(c) was not coterminous with Article 3 and that she erred in her assessment of credibility.
 9. On 18 April 2013 Designated First-tier Tribunal Judge Peart refused permission to appeal stating that the grounds disclosed no arguable error of law.
 10. The application was renewed and on 15 May 2013 Upper Tribunal judge Perkins refused permission stating that the overall determination dealt satisfactorily with the Appellant's case.
 11. An application was made for a Judicial Review and in an order dated 12 September 2013 the decision Upper Tribunal Judge Perkins was quashed by His Honour Judge Pelling QC. The Judge granted permission limited to Ground 1 in relation to Article 15(c) but refused in relation to Ground 2 stating that the credibility findings were unarguable.
 12. On 29 July 2014 permission to appeal was granted by C M G Ockelton Vice President of the Upper Tribunal in the light of the decision of the High Court.
 13. At the hearing I heard submissions from Mr Karnik on behalf of the Appellant that:
 - (a) The argument in relation to Article 15(c) was that the Judge's reasons were inadequate.
 - (b) The Judge spent a lot of time addressing the credibility issues but did not make clear what she accepted and what she did not and if she accepted the brother was injured that raised the Appellant's risk profile.

- (c) There was evidence before the Judge of problems in Tripoli and that as someone not in a particular clan and with a brother that was injured in the way he described this added to the Appellant's profile.
- (d) The Judge treated Humanitarian Protection and Article 15(c) as coterminous with Article 3.
- (e) The fact that there were no enforced returns suggested there was a risk on return.
- (f) He sought to address me in relation to the credibility findings although I suggested that did not appear to be within the grant of permission of the Administrative Court.
- (g) He accepted that a challenge to the credibility findings was an uphill struggle but suggested that the judge had failed to distinguish the difference between inconsistencies and differences in evidence.
- (h) The Judges adverse findings arising out of delay were unjustified as the Appellant had given an explanation.
- (i) The Judge drew an adverse inference from the Appellant's failure to mention in the asylum interview that his brother was shot in the leg but this was corrected in correspondence from his solicitors before the refusal letter was issued.

14. On behalf of the Respondent Mr Harrison submitted that :

- (a) He relied on the Rule 24 response.
- (b) The Judge directed herself appropriately.
- (c) The Judge's decision was detailed and her credibility findings were sustainable.
- (d) The Judge dealt adequately with the risk arising out of the country situation and the Upper Tribunal in AT and Others (Article 15(c): risk categories) Libya CG [2014] UKUT 00318 (IAC)

15. In reply Mr Karnik on behalf of the Appellant submitted:

(a) The case of AT post dated this case.

(b) To return the Appellant in his particular circumstances would place him at risk because of what happened to his brother.

(c) The documents examined by the Judge were photocopies and she may have been mistaken.

Finding on Material Error

16. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

17. I remind myself in making this decision that I am looking at whether the Judge who made her decision after a hearing on 19 March 2013 made a material error of law against the evidence of the country circumstances at that time.

18. In relation to Ground 2 which Mr Karnik sought to argue before me that the Judge erred in her assessment of credibility I note the limit of the High Court's grant of permission on the basis that such findings were unarguable. I therefore do not propose to go behind that.

19. The Judge summarised her assessment of the Appellant's claim at paragraph 119 and it is a summary against which she was entitled to assess his risk on return:

"I do not accept any part of the appellants claim in relation to Isra's family. I find that he has fabricated the account in an effort to establish an asylum claim."

20. The Judge concluded that the Appellant was of no interest either to Isra's family or because of any perceived political opinion.

21. In relation to the country situation in summarising the refusal letter the Judge had summarised their assessment of the situation by reference to Article 15(c) as in essence a categorisation of the situation as one of sporadic fighting that did not extend throughout the country. In paragraphs 91 and 92 she recorded the

submissions made by Mr Karnik and recorded that she asked him to direct her to the specific passages in the bundle of background material that supported his argument in relation to the country situation. These were recorded in her record of proceedings and indicated that she took them into account. There was no requirement for her to set out what was found in those passages.

22. The Judge's credibility findings led her to conclude that the Appellant was not at risk over and above any other failed asylum seeker. She went on in paragraph 92 to consider the general country situation after finding that his rights under Article 3 were not breached and concluded that there was nothing in the material before her even allowing for the fact that there were no enforced returns to suggest that the Appellant would face 'difficulties or problems' on return.. I am satisfied that this was a finding that was open to her in March 2013. The background material relied on by the Appellant in his bundle at pages 1-83 could not reasonably have led to any other conclusion; Pages 1-13 were witness statements, 13-18 was an article about combating terrorism in West Point, 72-73 was about honour killings, 66-71 was material from 2011 which given the fluidity of the situation in Libya could carry little weight and 81-83 was an unreported Upper Tribunal Decision.

23. Great weight was placed by Mr Karnik before the Judge on the documents at pages 75-80 in relation to enforced returns and the Judge made clear she took that into account. Mr Karnik sought to argue that because the res was no carrying out enforced returns and had not done so since 2011 that this was evidence of generalised violence at a level whereby Article 15(c) was engaged. However I am satisfied that the Judge was entitled to conclude that this was not determinative of the issue as there was no reported caselaw produced before her to suggest that was the case. Moreover the Operational Instruction before her dated 29 March 2011 and 21 February 2011 made clear that it was only enforced returns that were not being made, unescorted returns had continued and indeed Tripoli Airport did not close until July 2014. Although Mr Karnik argued that the CG case of AT post dated this decision I note that the Upper Tribunal in that case had before them similar material confirming the lack of enforced returns to Libya but nevertheless concluded that the levels of violence were not at Article 15(c) levels.

24. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1) : “*Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.*” I am therefore satisfied that the Judge’s decision when read as a whole set out findings that were sustainable and sufficiently detailed . The background material provided by the Appellant did not justify the Judge concluding that Article 15(c) levels of violence existed nor was the absence of enforced returns determinative of that issue.

CONCLUSION

25. I therefore found that no errors of law have been established and that the Judge’s determination should stand.

DECISION

26. The appeal is dismissed.

Signed

Date 16.3.2015

Deputy Upper Tribunal Judge Birrell