



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

Appeal Numbers: AA025852015  
AA030582015  
AA030652015  
AA030682015  
AA030732015

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 9<sup>th</sup> March 2016**

**Decision & Reasons  
Promulgated  
On 9<sup>th</sup> June 2016**

**Before**

**UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**[A R] (1)**

**[R B] (2)**

**[S R] (3)**

**[S A R] (4)**

**[R R] (5)**

**~~{ANONYMITY DIRECTION NOT MADE}~~**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Ms Warren, Counsel.

For the Respondent: Mr J Parkinson, Home Office Presenting Officer

## **DECISION AND REASONS**

1. These are the appellants' appeals against the decision of Judge Dickson made following a hearing at Bradford on 16<sup>th</sup> July 2015.

### **Background**

2. The appellants are citizens of Libya. The first and second appellants are married to one another and the third, fourth and fifth appellants are their children. The first appellant appeals against the decision of the respondent made on 18<sup>th</sup> January 2015 to refuse him asylum.
3. The first appellant entered the UK on 12<sup>th</sup> November 2009 with a visitor's visa valid until 14<sup>th</sup> January 2012. On 24<sup>th</sup> May 2011 he claimed asylum on the basis that he would be at risk of persecution under Gaddafi's regime in Libya due to the political demonstrations in which he had participated whilst residing in the UK. He was refused but in a decision promulgated on 23<sup>rd</sup> August 2011 Immigration Judge Mrs F M Kempton allowed the appeal under Article 3 of the ECHR.
4. On 8<sup>th</sup> February 2012 he was granted three months' discretionary leave.
5. On 7<sup>th</sup> May 2012 he made a further application for further leave to remain on the grounds that he was a refugee entitled to humanitarian protection and his human rights would be infringed if he returned to Libya. On 18<sup>th</sup> January 2015 he was refused.
6. The appellant's case was that his children would not be able to be educated in Libya. He does not know where his family is living since some are in Tunisia and others have fled and he has little contact with them. Their house in Tripoli was destroyed and looted. He had heard that his brother had been abducted and was currently being held in a prison by militia-linked extremists.
7. The judge said that there was an inconsistency in the evidence between the first and second appellant in that the first appellant said that he had no family in Tripoli whereas the second appellant said that her family were still living there. There were also inconsistencies in relation to what had happened about the family home in Tripoli in that he told his solicitor that the family had sold their possessions whereas in his statement he claimed that the house was looted and destroyed.
8. The judge said that he could place no reliance upon the first appellant's evidence.
9. The judge concluded that it could be assumed that there were still flights into and out of Libya. He said that the information produced by the appellant's representative had not overturned the guidance in AT and

Others (Libya). He was not satisfied that the family were close to the centre of power in the Gaddafi regime and even if one of his brothers was employed by the regime such employment or association alone was not sufficient to establish a risk of persecution. He concluded as follows:

“The first appellant and his family may prefer to stay in the UK especially as the children are now receiving some form of education in this country. The first appellant has not established that the conditions set out in Article 15(c) of the directive have been established in Libya. The first appellant has not established that he and his family would be specifically targeted on his return. Mr Shah also submitted that the government of Libya is now based in Tobruk. The Home Office objective Immigration refers to the situation being normal in Benghazi at the present time. In these circumstances the first appellant and his family could in my view return to Libya. If it was not possible for them to live in Tripoli then the internal flight option to places such as Tobruk would be available to them. In reaching my decision I take into account the House of Lords guidance in Januzzi.”

10. On that basis he dismissed the appeal.
11. The appellant sought permission to appeal on the grounds that the judge had erred in finding that there were contradictions in the first appellant's evidence and had not properly assessed the objective evidence provided to him.
12. Permission to appeal was granted by Judge Maller on 26 August 2015.
13. On 3<sup>rd</sup> September 2015 the respondent served a reply.

### **Submissions**

14. Miss Warren submitted that the judge had erred in not properly assessing the background evidence and had decided the case simply on the basis of whether the appellant fell within one of the risk categories identified by the Tribunal in AT. AT had been decided at a time when there was a single government in Libya and the situation had deteriorated markedly since then.
15. He had also erred in presuming that there were flights in and out of Libya when according to the FCO advice, still current, published in February 2015, Tripoli International Airport was closed on 13<sup>th</sup> July 2014 and Benghazi Airport has been closed since May 2014. It was not open to the judge to conjecture that there would be flights available.
16. She submitted that the judge's assessment of the appellant's evidence was flawed and that his credibility findings were unsafe.
17. Mr Parkinson submitted that it was not incumbent the judge to trawl through all of the evidence presented to him but in any event the appellant's bundle did not establish that the situation had deteriorated since the decision in AT. Much of the evidence in fact predated it. One

could assume that the Immigration Judge had looked at the documentation even if he had not said so and it was not an error of law for him to apply the country guidance case. He submitted that the judge's credibility findings were open to him and asked me to maintain the decision.

### **Consideration of Whether There is a Material Error of Law**

18. I am satisfied that the judge did err in law.
19. It was incumbent upon him to engage with the material which had been presented and not sufficient simply to state that it did not overturn the guidance in AT and Others. I am unpersuaded by Mr Parkinson's submission that the evidence was to capable of affecting the decision. Clearly the situation in Libya today is different from that when AT was decided.
20. Second, it was not open to the judge simply to assume that there would be flights available for the family to Libya. In HH (Somalia) and Others v SSHD [2010] EWCA Civ 426 Sedley LJ said at paragraph 122:

"It has been sufficient for the purposes of resolving the issues before us to confirm, as this court has said on previous occasions (albeit only obiter) that where the route and manner of return are known or can be implied, the first tier tribunal must consider whether the applicant would be put at risk if returned by that route. We have not found it necessary to resolve the wider question whether that tribunal must always consider that question whenever the applicant puts it in issue, although our strong provisional view is that it must. If that is right, it will inevitably have important consequences for the status of the applicant pending directions finally being issued to secure his removal or deportation. We have not had directly to address that issue but it is bound to arise in the near future. Conceivably it might require a reference to the ECJ in due course, but that is not necessary in this case and no-one has suggested it."
21. Third, the judge did not directly address the evidence about the first appellant's brother's involvement in pro-Ghaddafi activities in his credibility findings, concentrating on those matters which he said were contradictory. However it is not entirely clear why he placed weight upon those contradictions, if such they were. Whilst this in itself would not be sufficient to overturn the decision, it does mean that the most convenient course is for the matter to be reheard in the First-tier Tribunal when all issues will be at large.

Deborah Taylor

Signed

Date 8 June 2016

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Upper Tribunal Judge Taylor