



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/07204/2014

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 18 December 2015

Decision and Reasons Promulgated  
On 4 January 2016

**Before**

**Deputy Upper Tribunal Judge Pickup**

**Between**

**AAS**

[Anonymity direction made]

Appellant

**And**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the appellant: Ms S Khan, instructed by GM Immigration Aid Unit  
For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, AAS, date of birth 22.170, is a citizen of Libya.
2. This is his appeal against the decision of First-tier Tribunal Judge Smith promulgated 15.12.14, dismissing his appeal against the decision of the Secretary of State, dated 4.9.14, to refuse his asylum, humanitarian protection and human rights claims. The Judge heard the appeal on 28.11.14.
3. Designated First-tier Tribunal Judge Zucker granted permission to appeal on 13.1.15.

4. Thus the matter came before me on 18.12.15 as an appeal in the Upper Tribunal.

### **Error of Law**

5. For the reasons set out below, I find no error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Smith to be set aside.
6. The relevant background of the claim can be summarised briefly as follows. The appellant claims that he worked in an executive position for a humanitarian charity in Tripoli. It is asserted that a brigade or armed militia took over a building adjacent to the appellant and they prevented the charity from operating and raided the building from which it operated. He complained to the police and also reported the situation to the Interior Ministry, but a few days later the building was raided again and he was forced to flee Tripoli, believing that the brigade intended to arrest him. His home was also raided and they searched for him at his father's home. He obtained documentation to travel to the UK and returned to Tripoli to collect this documentation before leaving via Tunisia and then Frankfurt. He claims that he cannot return to Libya because of the threats made by the brigade and that he thus has a fear of persecution on the basis of imputed political opinion.
7. In essence, the appellant's case turned on his credibility. Judge Smith found the appellant's account not credible, for the reasons set out from §24 of the decision of the First-tier Tribunal.
8. From §5 the grounds set out a number of complaints about the decision of the First-tier Tribunal, asserting that the judge made factual errors and adverse findings without adequate reasoning. It is also submitted that the judge misdirected himself as the risk on return on the basis of AT and Others (Article 15C risk categories) Libya CG [2014] UKUT.
9. In granting permission to appeal, Judge Zucker noted that the grounds include the submission that the Judge erred in conflating two events in making an adverse credibility finding and in reliance upon a Tunisian stamp in the appellant's passport erred in making the finding that the appellant passed through Libyan immigration control.
10. I am satisfied that there is no merit in the first ground of appeal as to conflation of two separate incidents. Consideration of §27 of the decision and the evidence reveals no such conflation, but as Judge Smith described it, a "material discrepancy." In fact, the judge found in the appellant's favour in relation the refusal decision on this point. The Secretary of State had suggested at §15-16 of the refusal decision that the appellant gave an inconsistent account with regard to having attempted to reason with brigade members. It was suggested that he claimed to have attempted to reason with the brigade but this was inconsistent with his account that even the police were scared of the brigade and it was not credible that he would put himself in danger by doing so. However, the judge was satisfied that at Q70 of the asylum interview the appellant was referring to visiting headquarters, where he sat down with the legal advisor, who warned him about the brigades. The judge was satisfied that he was

referring to visiting the authorities to complain about the actions of the brigade and was not there suggesting that he had attempted to reason with the brigade directly.

11. However, the judge went on to point out that in his 'rebuttal statement' the appellant pointedly and clearly stated that he had never approached the brigade to try and reason with them, suggesting that had he done so he would definitely have been murdered. Then the judge referred to further answers in interview from Q74 onwards where the appellant was clearly confirming that he had tried to reason with the brigade, only to be accused of collaborating with the old regime and they put guns to his neck. This is a clear inconsistency and it is this inconsistency the judge was entitled to rely on. The judge was satisfied that at the time of his interview the appellant was trying to suggest he had directly approached the brigade and by implication that is why he was subsequently targeted. The judge was satisfied that he had changed his account by the time of his witness statement and thus rightly considered this a material discrepancy. No error of law is disclosed in this regard and there is no merit in this ground of appeal.
12. Complaint is made in §6 of the grounds that at §28 of the decision the judge found that a letter relied on by the appellant, which he claims was sent to the Ministry of the Interior, dated 26.11.13, detailing the problems the charity was having, being harassed by the brigade. At §28 Judge Smith simply stated that even if this letter is genuine, and there is reason given in the refusal decision to think otherwise, it does nothing to explain why the appellant personally would be targeted, as he is not named in the letter and is not a signatory. In other words, the letter does not materially advance the appellant's case to be personally at risk on return. I am satisfied that the judge's comment is fair and reasoned and made in the light of the evidence taken as a whole. There is no merit in this ground of appeal.
13. Ms Khan did not concede the suggestion of Mr McVeety that the ground of appeal set out at §7 is nonsense, but she did not pursue it with any vigor. At §31 the judge had pointed out that the appellant has a Tunisian border stamp in his passport, showing that he went through an official border checkpoint when exiting Libya and entering Tunisia. In his interview he claimed that he crossed the border without going through any checkpoints, trying to suggest he did not leave Libya legally because of the threat to his life. Judge Smith was satisfied on the basis of the Tunisian stamp that he must have passed through a border checkpoint and thus could not have left Libya illegally as claimed. This point significantly undermined the appellant's credibility. The grounds suggest that although there is a Tunisian entry stamp this did not mean he had exited Libya through an official checkpoint. This is plain nonsense and discloses no error of law. It is not surprising that Ms Khan did not actively pursue this ground.
14. I find no error of law in the judge's reliance as undermining his credibility the fact that the appellant allegedly in such fear of the brigade that he felt forced to flee Tripoli and in due course Libya, he nevertheless returned to Tripoli to collect travel documents. At §32 the judge pointed out the appellant remained in Libya between November 2013 and April 2014, and during that period returned twice to Tripoli to

lodge his visa application and return to collect it, all without problems. He had the necessary travel documents some 2 months before he eventually left. The judge considered but rejected the suggestion that the delay was attributed to his fear of being apprehended at the airport. The judge was entitled to consider but then reject the explanation offered, especially when considered with the other credibility findings and to consider as undermining of that credibility that he twice returned to an area claimed to be a danger to his life. There is no merit in this ground of appeal.

15. The ground of appeal at §9 has no practical force, since it deals with the hypothetical risk on return of the appellant even if his account were to be considered credible. The ground is developed further at §10 to suggest that the judge was incorrect to follow AT and that he failed to engage with the background material.
16. However, the background material was quite limited, at issue was a UNHCR position paper, but the judge was supplied with only a short press release about this position paper, as he pointed out at §10. It is not for the judge to hunt out the evidence. Ms Khan did not have the appellant's supplementary bundle containing this position paper and other similar but limited press releases and was not aware that the full position paper had not been supplied. Ms Khan did submit however that the background evidence suggested that the situation had deteriorated further since AT was decided on 14.7.14, based on the circumstances prevailing as of 22.11.13. It is submitted that the judge failed to properly engage with the background material.
17. Mr McVeety pointed out that it is common case authority that before departing from a country guidance case a judge must have good and cogent evidence to demonstrate that the circumstances were significantly different to when a country guidance decision was promulgated. More significantly, Mr McVeety pointed out that the appellant's own expert, Dr George, at §77 of his report, dated 24.10.14, was of the opinion that although the appellant would be at risk of imminent violence, this risk was not high. At §84 Dr George also stated that it was not clear to him that the militia that he fears would be sufficiently motivated against him to expend resources and time pursuing him across the country. "In my opinion they would be unlikely to consider his 'offences' to have been grave," whilst not ruling this out. In the light of these opinions from the appellant's own expert, and the paucity of the claimed background material, I find no error of law in the judge's reliance on AT. The judge considered the submission that the situation had deteriorated further since AT, but explains with cogent reasons why he was satisfied that return to Libya would not breach the UK's Article 15C responsibility.
18. In the circumstances, the grounds are weak and disclose no material error of law in the decision and reasoning of the First-tier Tribunal Judge.

### **Conclusions:**

19. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. Given the circumstances, I am anonymity order.

**Fee Award**

**Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case and thus there can be no fee award.



**Signed**

**Deputy Upper Tribunal Judge Pickup**