



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

Appeal Number: AA072872015

THE IMMIGRATION ACTS

**Heard at Glasgow
On 16 March 2016**

**Decision &
Promulgated
On 23 May 2016**

Reasons

Before

UPPER TRIBUNAL JUDGE DEANS

Between

**HB
(Anonymity order made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Winter, Advocate, instructed by McGlashan
MacKay

For the Respondent: Ms S Saddiq, Home Office Presenting Officer

DECISION AND REASONS

- 1) This is an appeal against a decision by Judge of the First-tier Tribunal Bradshaw dismissing an appeal on asylum and human rights grounds.
- 2) The appellant was born on [] 1984 and is a national of Libya. He claimed asylum primarily on the basis that he would be at risk on return to Libya as an atheist.
- 3) According to the application for permission to appeal, the Judge of the First-tier Tribunal accepted that the appellant was an atheist but arguably erred

by not assessing the appellant's fear of having to answer truthfully questions about religion if he returned to Libya. It was further arguable that the judge had not properly considered the report of an expert witness and had not properly addressed credibility under section 8 of the 2008 Act.

- 4) At paragraph 86 of the decision, the Judge of the First-tier Tribunal made findings in the following terms:

“In considering all the evidence in the round I do not accept that the appellant has a genuine fear of returning to Libya because he is an atheist. I accept that the appellant, like the majority of his family and in particular his parents, does not practise as a Muslim and may not believe in God. However, I do not accept that the appellant has been a credible witness and has provided full and accurate information to the respondent and to the hearing. It is my view that he has artificially built upon this atheist issue to improve the chances of success in his claim for asylum and that he is not as claimed an individual who would behave in such a way in Libya in relation to publicly displaying an atheist belief so as to cause him to be at risk specially from Islamic extremists. It is my view that had this been the case he would have specifically made reference to such a fear in his screening interview, his first port of call in his asylum claim after he had been in the UK for almost eight years, yet he failed to do so. His credibility, as already referred to, is also materially adversely affected by his failure to claim asylum at an earlier date and by his clearly untruthful reasons as to why he did not claim asylum at an earlier date. It is my view that his credibility in respect of the issue of atheism is also adversely affected by the issues already referred to above in his asylum interview.”

- 5) The judge then went on to consider an expert report by Dr George, which stated that there was no part of Libya where atheists would not potentially be at risk. The judge then stated, at paragraph 92:

“Considering the contents of Dr George's report, founded upon by the appellant, even if this appellant was an atheist of the type described by himself (and I do not accept this) the appellant has failed to persuade me to the necessary standard of proof that he would be at real risk on return of persecution because of membership of a particular social group namely as an atheist in Libya. It seems to me that it would not be unduly harsh that the appellant return to Tobruk if he is unable to return to his home town of Derna.”

- 6) In the application for permission to appeal, it is observed that the judge having accepted that the appellant did not practise as a Muslim and also that he may not believe in God, it was unclear what relevance the other adverse findings, relating to the appellant's delay in claiming asylum and omitting to state at his screening interview that he feared return due to being an atheist, would have on the appeal in the light of the favourable findings made. It was further said that the judge had misconstrued or misunderstood the appellant's case. This was not that the appellant would behave in a public manner by displaying his atheism but that he would have to conceal his atheism for fear of a real risk of persecution. Reference was made to the case of HJ (Iran) [2011] 1AC 596.

- 7) It was further pointed out in the grounds that notwithstanding the expert's view that internal relocation would not lessen the risk to the appellant the judge held that the appellant could relocate to Tobruk. The evidence did not support this finding.
- 8) At the hearing before me Ms Saddiq accepted that the issue arising from the case of HJ (Iran) was not considered by the judge. The judge's failure to consider the effect of HJ (Iran) upon the appellant's atheism was an error of law.
- 9) Having heard from Ms Saddiq on this point, I did not consider it necessary to hear from Mr Winter. I share the puzzlement expressed in the grounds of the application for permission to appeal about how the judge was able to question the appellant's claim to be an atheist once the judge accepted that the appellant did not practise as a Muslim and might not believe in God. It is possible the judge intended to make a distinction between atheism and agnosticism but, if that was the judge's intention, this was not made explicit and no reasoning was provided to support it.
- 10) For practical purposes, the judge accepted that the appellant was an atheist. The question then was whether this would give rise to a real risk of persecution in Libya.
- 11) The judge noted that at his asylum interview the appellant said he did not discuss his atheism with friends in Libya because if he did so they would not be happy about it. They would probably tell other people that he was a non-believer or atheist and this would put him in a dangerous situation. He was asked about his fear of returning to Libya. He responded that he would be questioned by a tribal militia, or even a foreign militia, especially about the eight years for which he had been abroad. He would be accused of having worked for foreign power, or a foreign country.
- 12) As stated in the application for permission to appeal, the appellant's fear did not arise from behaving in a way that would display his atheism but from having to conceal his atheism. The appellant ought not to be expected to lie about his lack of religious belief because of a fear of persecution. This is the point which arises from HJ (Iran). A directly related point was made by the Supreme Court subsequently in RT (Zimbabwe) [2012] UKSC 38, where it was confirmed that the principles set out in HJ (Iran) applied to an asylum claim based on an imputed political opinion. A person who would otherwise suffer persecution should not be required to take steps to evade it by fabricating a loyalty, which he or she did not hold, to a brutal and despotic regime. The right to a freedom of thought, conscience and religion extended to those who held no political opinions, as well as to the committed activist.
- 13) What was said in (RT) Zimbabwe in relation to political opinion applies equally to religious belief. The appellant ought not to be expected to lie about his absence of belief, or to pretend to have a belief which he does not hold, in order to avoid persecution.

- 14) The Judge of the First-tier Tribunal erred in law by failing to consider whether the appellant would be forced to lie about his lack of religious belief in order to avoid persecution. Because of this error the decision of the First-tier Tribunal is set aside.
- 15) At the hearing before me the parties were agreed that the proper course would be for the appeal to be remitted to the First-tier Tribunal for a hearing at which the appellant's appeal could be properly assessed.
- 16) There is some confusion in the findings of fact made by the judge and for this reason none of the judge's findings should be preserved. It will be for the new Tribunal to decide the issues of fact and whether, on the basis of those findings, the appellant has a well founded fear of persecution.

Conclusions

- 17) The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
- 18) I set aside the decision.
- 19) The appeal is remitted to the First-tier Tribunal for a hearing before a different judge with no findings preserved.

Anonymity

The First-tier Tribunal did not make an order for anonymity. In view of the remittal of the appeal, however, and in view of the nature of the appellant's asylum claim, I consider it appropriate that an order should be made in the following terms. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an anonymity order. Unless and until a tribunal or court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of Court proceedings.

Signed

Date 20th May 2016

Upper Tribunal Judge Deans