



**Upper Tribunal
(Immigration and Asylum Chamber)**
PA/02234/2015

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Manchester

**Decision & Reasons
Promulgated**

On: 21st June 2017

On: 23rd August 2017

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**YA
(anonymity direction made)**

Appellant

And

The Secretary of State for the Home Department

Respondent

**For the Appellant: Mr G. Brown, Counsel instructed by Greater
Manchester Immigration Aid Unit**

**For the Respondent: Mr Harrison, Senior Home Office
Presenting Officer**

DETERMINATION AND REASONS

1. The Appellant is a national of Libya born in 1983. He appeals with permission the decision of the First-tier Tribunal (Judge Gladstone) to dismiss his protection appeal.

Anonymity Order

2. This appeal concerns a claim for international protection. I have decided to make a direction for anonymity, having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders. I make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Matters in Issue

3. In seeking international protection the Appellant advanced a claim on the grounds that as a member of the Zintan tribe he had suffered serious harm at the hands of a hostile militia in Tripoli, including being kidnapped and threatened. Beyond an acceptance of the Appellant’s claimed ethnicity and nationality the Respondent had rejected the whole account for want of credibility.
4. When the matter came before the First-tier Tribunal the Tribunal did not believe the account of kidnap and threats. As to the danger that the Appellant might face as a member of the Zintan tribe in Libya today the Tribunal had regard to the then extant country guidance case of AT and Others (Article 15(c) – Risk Categories) Libya CG [2014] UKUT 00318 (IAC) and finding that there was no real risk of indiscriminate harm, dismissed the appeal.
5. The Appellant now appeals on the following grounds:
 - i) That the First-tier Tribunal erred in its assessment of his credibility, having failed to have regard to any of the country background material in its analysis;
 - ii) The Tribunal failed to have regard to the changes in the country situation since the decision in AT & Others was made.

Error of Law

6. The hearing came before this Tribunal, sitting in Liverpool, on the 31st January 2017. On that day the Secretary of State for the Home Department was represented by Senior Presenting Officer Mr McVeety. In a decision promulgated that day I held that the decision of the First-tier Tribunal must be set aside, to a limited extent. My written reasons were as follows:

“Before me Mr McVeety conceded that he could have no real objection to the second ground. The decision in this appeal was promulgated on the 20th July 2016. On the 7th September 2016 the Vice President of the Upper Tribunal Mr CMG Ockelton promulgated the decision in FA (Libya: art 15(c)) Libya CG [2016] UKUT 00413 (IAC). This indicated that due to significant changes on the ground in Libya the decision in AT & Others was no longer to be followed. The decision in respect of Article 15(c) is therefore set aside to be remade.

In respect of the first ground Mr McVeety defended the decision. He pointed out that the Tribunal rejected the account of kidnap and threats not on grounds of plausibility, but because the account had varied in its telling, and because significant discrepancies had emerged in the chronology. I agree that this ground is not made out. The Tribunal could have had regard to the country background material, for instance evidence to indicate that a person of Zintan ethnicity might plausibly encounter problems with militiamen from Libya Dawn. This would have made however no difference at all to the outcome of the credibility assessment, since none of the findings were predicated on grounds of implausibility. Put another way, the country background material would not have cured the defects in the Appellant’s case.”.

7. Accordingly the matter proceeded to be listed for remaking on that basis. The decision in respect of the claimed historical account was upheld, but the final decision as to risk was to be remade.

The Re-Making

8. There followed some delay in the appeal being relisted for disposal. This was because the parties had agreed that the case should be adjourned pending the outcome of the country guidance case on whether the conflict in Libya engaged Article 15(c) of the Qualification Directive. It came back before me on the 21st June 2017. The country guidance was still not available. The parties agreed that the final determination of this appeal should follow the handing down of that decision. ZMM (Article 15(c)) Libya CG [2017] UKUT 263 (IAC) became available on the 28th June 2017 and the file in this appeal has now been returned to me for final disposal.
9. As explained in my 'error of law' decision the Respondent had accepted that the First-tier Tribunal had erred in its approach to the issue of Article 15(c). Although the Tribunal could not be criticised for applying the extant country guidance in AT & Others, fresh evidence had become available which indicated that the situation in Libya had dramatically worsened ; the error was the failure to engage with that evidence and make reasoned findings on it (the decision in FA applied). At the date that I remake the decision the applicable country guidance is ZMM. The headnote summarises the findings in that case:

The violence in Libya has reached such a high level that substantial grounds are shown for believing that a returning civilian would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to a threat to his life or person.

It follows that the Appellant's appeal must be allowed on protection grounds, because he is entitled to humanitarian protection.

10. Mr Brown submits that in this case however, recourse to Article 15(c) is not necessary since on the facts the Appellant qualifies for refugee status. Although Judge Gladstone's findings on past persecution are preserved, Mr Brown points out that the Appellant is accepted to be a member of the Zintan tribe. As such, Mr Brown submits, he is reasonably likely to come to serious harm when crossing checkpoints of rival militias. The Zintan militia are one of the most prominent factions in the civil war and as such it is reasonably likely that a young Zintani man travelling on his own might be singled out for retribution, punishment or kidnap, particular when encountering armed factions representing, or allied to, the group

formally known as 'Libya Dawn', who at the date of ZMM held the airport in Tripoli and much of the city. The Appellant submits that over and above the risk that he faces as a civilian, his ethnic origins render him particularly vulnerable. The country background evidence, it is submitted, establishes that many of the human rights abuses occurring in Libya today are ethnically targeted. See for instance the February 2016 of the Secretary General of the UN: "armed groups act with complete impunity, continuing to abduct, torture and kill civilians on the basis of their perceived or actual family links, origin or political affiliation"¹. It is accepted that the Zintan are politically allied with General Haftar in the East [see paragraph 2 ZMM] and that as such they are in direct conflict with the forces collectively known - or formerly known - as Libya Dawn: see for instance the OHRCR report dated February 2016 "Amongst the primary armed groups opposed to Libya Dawn are the Zintan-based Al-Sawa'iq, Al-Qa'qa'a and Al-Madani brigades...".

11. The risks to the Appellant's person are articulated in ZMM. He faces a risk of harm as a civilian from *inter alia* explosive remnants of war, shelling, bombing, indiscriminate firing, from the exponential rise in violent criminality, and from the human rights abuses meted out by armed militias accountable to no central authority. It is only the last of these feared harms that might, in this context, engage the Refugee Convention: if the Appellant is caught in crossfire it is unlikely to be for reasons of his ethnic origins. Since it was only the cumulative *total* of those risks which engaged Article 15(c), can it be said that this rather slim causal nexus is sufficient to entitle the Appellant to refugee status?
12. On the one hand it is arguable that the harm feared - assault, kidnap or worse at a checkpoint - is statistically not great enough to make out a risk, even on the lower standard. The evidence points to such abuses, and on the material cited above certainly connects them to ethnicity and perceived political allegiance, but the evidence is not sufficient to demonstrate that these events happen so often that the Appellant can be said to be at risk for a Convention reason simply on that basis.
13. On the other the Tribunal has already found the risk of serious harm to exist. It is trite refugee law and that if any part of the causal nexus between serious harm and the reasons for it is established to be for a 'Convention reason', then the claim is made out: see for instance Sivakumar [2003] UKHL 14. It would be wrong to dissect the global risk and assess each element in isolation. The risk is of harm, and if the harm is inflicted - to any significant degree - for a Convention reason, then the claim will be made out.

¹ Page 43 Appellant's bundle

14. I am satisfied that if confronted with Libya Dawn militiamen at a checkpoint there would be a particular risk to the Appellant because he would be identifiable as being from the Zintan tribe. That risk is likely to result in serious harm. The appeal is therefore allowed on protection (refugee grounds).

Decisions

15. The determination of the First-tier Tribunal contains errors of law and it is set aside to the extent identified above.
16. The decision is remade as follows:
“The appeal is allowed on protection (asylum) grounds. In the alternative, it is allowed on humanitarian protection grounds”.
17. There is an order for anonymity.



Upper Tribunal Judge Bruce
22nd August

2017