



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/02242/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 5 July 2017**

**Decision  
Promulgated**

**On 7 July 2017**

**& Reasons**

**Before**

**UPPER TRIBUNAL JUDGE O'CONNOR**

**Between**

**M Z**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Moran of Alex Moran Immigration

For the Respondent: Mr D Clarke, Senior Presenting Officer

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure  
(Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant herein is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's family. Failure to comply with this direction could lead to contempt of court proceedings.

## **DECISION AND REASONS**

### **Introduction**

1. The appellant, a national of Libya, entered the United Kingdom in July 2015 and claimed asylum shortly thereafter.
2. That application was refused by the Secretary of State on 15 October 2015, a decision that the appellant appealed to the First-tier Tribunal. The appeal was dismissed by First-tier Tribunal Judge Handley, in a decision promulgated on 3 October 2016. In so concluding Judge Handley found the core of the appellant's account to lack credibility and thereafter relied upon the decision of the Upper Tribunal in AT and Others (Article 15(c); risk categories) Libya CG [2014] UKUT 318 to found a conclusion that there was no real risk of the appellant suffering from persecutory or other ill-treatment upon return to Libya.

### **Error of Law**

3. By way of a decision signed on 8 February 2017 Deputy Upper Tribunal Judge Holmes set aside the First-tier Tribunal's decision for the following reasons.
  - "5. It is common ground before me that although the appellant's evidence concerning the events that had supposedly led to his leaving Libya had been rejected as untrue, he had always held four undisputed innate characteristics that were relevant to any assessment of the risk he faced as a result of any ongoing armed conflict in Libya. His identity was not in dispute, and thus (as his passport confirmed) he was a male of fighting age. His visa application disclosed that he was from Benghazi, and his name disclosed his membership of the Z tribe. He would readily be visually perceived as of Black African rather than Arabic ethnicity. Although not one of those innate characteristics, it was also relevant to consider that he is a qualified archaeologist, whose immediate family (consisting of his parents, siblings, wife and children) have remained throughout living in a family home in Benghazi.
  6. It is also common ground before me that the FTT failed to undertake an adequate assessment of the evidence available when considering the appellant's case in relation to Article 15(c), whether that be the evidence of those innate characteristics, or, the evidence of the current situation within Libya. Indeed it is difficult to discern from the decision any assessment of that ground of appeal beyond its bold dismissal. Last, it is common ground that there is a clear error of law that requires the decision upon humanitarian protection claim to be set aside and remade. There is however no complaint about the findings made in relation to the disputed issues of primary fact and no reason therefore why they should not be disturbed."

### **Re-making of Decision**

4. In the period between the promulgation of Judge Holmes' decision and the hearing before me, the Upper Tribunal issued a new country guidance

decision relating to Libya, ZMM (Article 15(c)) Libya CG [2017] UKUT 00263 (IAC) - the headnote to which reads:

“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.”

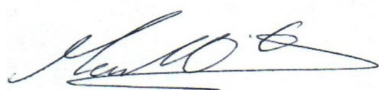
5. In remaking the decision in the instant appeal, I must take account of the recent country guidance decision and only depart from its conclusions if there is sufficient evidence requiring me to do so. There is no additional evidence before me relating to the current situation in Libya that was not before the Tribunal that determined the appeal in ZMM.
6. The consequence of this, as both parties accept, is that I must apply the findings in ZMM to this appellant's circumstances. Inevitably, and uncontroversially, that leads me to conclude that the appellant is entitled to humanitarian protection and that his removal *“would breach the United Kingdom's obligations in relation to [a person] eligible for a grant of humanitarian protection”*. I allow this appeal accordingly.
7. Mr Moran invited the Tribunal to conclude, in addition to that set out above, that the innate characteristics personal to this appellant (identified in paragraph 5 of Judge Holmes' decision) would lead to a level of risk for the instant appellant over and above the risks identified in ZMM. I agree that this is so but need make no further findings in this regard.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside for the reasons given by Deputy Upper Tribunal Judge Holmes.

Upon remaking the appellant's appeal is allowed.

Signed:



Upper Tribunal Judge O'Connor  
Dated: 6 July 2017