



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07172/2016

THE IMMIGRATION ACTS

Heard at Newport
On 19 October 2017

Decision & Reasons Promulgated
On 23 November 2017

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NAAM
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr I Richards, Senior Home Office Presenting Officer
For the Respondent: Ms S Nawaparast of NLS Solicitors

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) we make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.
2. Although this is an appeal by the Secretary of State, for convenience we will hereafter refer to the parties as they appeared before the First-tier Tribunal.

Background

3. The appellant is a citizen of Libya who was born on [] 1979. He arrived in the United Kingdom on 6 December 2013 and claimed asylum. The basis of his claim was that he was at risk on return to Libya because he had previously been a member of the Gaddafi Security Services.
4. On 21 June 2016, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.
5. As regards the appellant's international protection claims, the Secretary of State concluded that the appellant was excluded from the Refugee Convention under Art 1F(a) because he had aided or otherwise assisted the torture of opponents of the Gaddafi regime whilst working for the security services. He was also, as a result, excluded from humanitarian protection. In addition, the Secretary of State rejected the appellant's account that he had been arrested and detained by the Ansar Al-Shari group following the death of Colonel Gaddafi and seriously ill-treated because of his association with the Gaddafi regime.

The Appeal

6. The appellant appealed to the First-tier Tribunal. In a decision sent on 17 February 2017, Judge Price allowed the appellant's appeal on asylum grounds. First, she did not accept that the appellant was excluded from the Refugee Convention by virtue of Art 1F(a) because she was not satisfied that he had been knowingly involved in the torture of opponents of the Gaddafi regime. Secondly, she accepted the appellant's account that he had been a member of the Gaddafi Security Forces and that, following the death of Colonel Gaddafi, he had been detained and seriously ill-treated by the Ansar Al-Shari group as a result of that involvement.
7. The Secretary of State sought permission to appeal to the Upper Tribunal. On 9 June 2017, the First-tier Tribunal (Judge Pedro) granted the Secretary of State permission to appeal.
8. Thus, the appeal came before us.

Discussion

9. On behalf of the Secretary of State, Mr Richards relied upon the three grounds on which permission to appeal had been granted.
10. First, he submitted that the judge had erred in law took issue with the finding that the appellant was not aware that, as a result of his activities with the security services in Libya, detainees were tortured. In reaching that conclusion the judge had, in Mr Richards' submission, erred in preferring the appellant's evidence in a verbatim transcript of his asylum interview over that recorded in the Secretary of State's record of the asylum interview. Mr Richards submitted that the transcription did not provide any evidence of professional accreditation and the judge gave no reason for preferring it.
11. We did not invite Ms Nawaparast to respond to this ground which, in our judgment, is wholly unsustainable.

12. Faced with a conflict as to what was said at the appellant's asylum interview, in the absence of any reason to believe that the transcription was inaccurate, the judge was fully entitled to rely upon it. Mr Richards did not suggest that it was inaccurate. Despite the Secretary of State's challenge on this ground, she has not sought to obtain a further transcription of the interview and demonstrate that the transcription before the judge was inaccurate. Consequently, we reject this ground.
13. Secondly, Mr Richards submitted that, even if the transcribed version was taken at face value, the judge erred in assessing the appellant's exclusion and asylum claim in two respects.
14. First, the judge had failed properly to consider the background evidence. Mr Richards submitted that at para 51, the judge paraphrased the *US State Department Country Report on Human Rights Practices in Libya in 2009* (at page 173 of the respondent's bundle) as stating that: "there were no confirmed reports that the government or its agents committed arbitrary or unlawful killings in the year of study" and cited the statement in the report to the effect that "the law prohibits practices of torture and other inhumane, or degrading treatment". The judge then went on to say in para 52 that: "in the light of this background evidence, the appellant's account that he believed practices had changed when he took up employment in the security forces, is plausible." Mr Richards submitted that this was a distortion of the background evidence in that the report itself, at page 173 went on to say in relation to torture and other mistreatment:

"The law prohibits such practices, but security personnel reportedly routinely tortured and abused detainees and prisoners during interrogation or as punishment. Detainees often were held incommunicado. Foreign observers noted that incidents of torture - used as a punishment in Internal Security Service prisons - seem to have increased over the year."
15. Likewise, Mr Richards pointed out that the 200 page bundle contained a number of documents highlighting the use of torture and ill-treatment by the Gaddafi regime covering, inter alia, the period during which the appellant worked for the security services.
16. Mr Richards submitted that the judge's conclusion and reasons in paras 51-53, that it was not established that the appellant had been involved in torture or knew such acts took place, were flawed.
17. We accept Mr Richards' submissions. Even if, as Ms Nawaparast submitted, some of the evidence is supportive of the appellant's claim, some plainly does not. It was for the judge to grapple with all the relevant background evidence and make findings upon it. It is clear to us that the judge failed to consider all the relevant background evidence which, in a number of respects, supported the respondent's case that torture was used by the Gaddafi regime at the relevant time when the appellant worked for the security services.
18. Secondly, Mr Richards contended that the judge's factual findings were, in part, based upon a misunderstanding of the respondent's position in the refusal letter. In para 55, Mr Richards pointed out, the judge stated that: "the respondent has accepted the core of the appellant's claim, for it to be able to go on to investigate if the appellant meets the criteria for exclusion." Then, at para 56 the judge went on to

say: "I find that as the core of the appellant's claim has been accepted by the respondent then the documents provided by the appellant can be relied upon." Mr Richards submitted that was not the respondent's position in the refusal letter. She did not accept the factual matrix upon which the appellant's claim was based.

19. Ms Nawaparast sought to persuade us that the judge had not misunderstood the respondent's position in the decision letter but to no avail. We accept Mr Richards' submissions. It is clear, on reading the refusal letter, that the Secretary of State did not accept the appellant's claim, whether the "core" elements or otherwise. For example, at para 109 it is stated that: "it is not believed that you were arrested and mistreated by Ansar Al-Shari for the reasons that you have alleged ...". Likewise, at para 118 the respondent states that: "... it is not believed, with reference to paragraphs 88-117 above, that you were arrested, detained and mistreated by Ansar Al-Shari as you claimed." The judge erred in law in approaching the assessment of the appellant's claim on the false basis that the respondent accepted the truth of his account.

Decision

20. For these reasons, as we indicated at the end of the hearing, the judge's decision to allow the appellant's appeal involved the making of an error of law and cannot stand.
21. The decision of the First-tier Tribunal is, accordingly, set aside and the appeal is remitted to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Price.

Signed



A Grubb
Judge of the Upper Tribunal
22, November 2017