



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/07773/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Newport**

**On 4 October 2017**

**Decision & Reasons  
Promulgated  
On 30 October 2017**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB  
DR H H STOREY, JUDGE OF THE UPPER TRIBUNAL**

**Between**

**B S  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Mr I Richards, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a national of Libya and member of the Tebu tribe has permission to challenge a decision of First-tier Tribunal (FtT) Judge Hussain sent on 15 March 2017 dismissing his application for international protection. Having found that the appellant had not given a credible account of past difficulties in Libya, the judge turned to consider the “main plank” of the appellant’s claim based on real risk of serious harm contrary to Article 15(c) of the Qualification Directive (2004/83/EC). The judge

noted that the appellant contended that circumstances in Libya had changed since the country guidance case of **FA (Libya: art 15(c)) Libya CG [2016] UKUT 00413 (IAC)** which held that risk had to be determined on a case-by-case basis. The judge stated at paragraph 16 that the appellant acted on “the cessation of direct flights from the UK to Libya, the ebb and flow of fighting, the rise in Daesh and the issue of numerous reports and advice by the Foreign and Commonwealth Office”. The judge proceeded to find that Tripoli International Airport reopened on 16 February 2017 and in any case, Mitiga Airport was still a safe route in; and that the appellant had failed to substantiate his claim that there was a general risk to members of the Tebu tribe. At paragraph 19 the judge stated:

“In his witness statement, the appellant argues that he could not stay in Tripoli because it is controlled by Libya Dawn and the Zwayia tribe are a part of the alliance and because of the enmity between them and the Tebu, that he would face certain death if returned to Tripoli. The appellant does not argue that there is a specific risk towards him but rather that there is a general risk to members of the Tebu tribe. This is mere speculation on his part unsupported by any credible evidence. As I have already said, there is no credible evidence to show that members of the Tebu tribe have been targeted in Tripoli nor that they have faced any problems there. Nor has the appellant shown that the level of violence in Tripoli has reached or surpassed the test identified in Elgafaji. In short, the appellant has not shown that there is either a specific or general risk to him under Article 15(c) if he is returned to Tripoli. I am therefore satisfied that it would be safe to return the appellant to Tripoli where he has lived for many years. He is highly educated and from an affluent background. He was able to live in Tripoli, on his evidence, from 2007 to 2012 before returning to the United Kingdom. His background evidence shows that he supported himself in Tripoli whilst he lived there and he has not put forward any credible evidence to suggest otherwise.”

2. The judge stated that the latest Home Office Country Policy and Information Note on Libya dated January 2017 had concluded there was no general Article 15(c) risk in Libya and “[s]uch objective evidence as I was referred to by the appellant from his voluminous bundle did not persuade me otherwise” and that “the Home Office Policy and Information Note is “specific to the task and carries more weight [than the FCO travel advice]”.
3. At the hearing before us there was no appearance by or on behalf of the appellant. There was however a letter from his representatives explaining that they would not be attending and asking the UT to deal with the case on the papers. Having considered the matter we decided to proceed with the hearing in the absence of one of the parties.
4. The grounds of appeal contained three grounds, the first contending that the judge had failed to engage with the evidence showing the Tebu tribe was targeted; the second contending that the judge’s assessment that the

appellant would have a safe route of return was contrary to the evidence; and the third arguing that the judge had erred in failing to engage with what the judge said was the appellant's "voluminous evidence" demonstrating a general Article 15(c) risk to Libyan civilians.

5. Prior to the hearing the respondent wrote to the appellant and the UT conceding that the judge materially erred in law. We accept that concession and consider it properly made – in view of the evident failure of the judge to state any reason for preferring the Home Office Country Information and Policy report to the various reports produced by the appellant indicating the level of indiscriminate violence in Libya was now so high as to demonstrate that there was an Article 15(c) general risk to Libyan civilians. Furthermore, we note that much of the contents of the materials produced by the appellant in his "voluminous evidence" was the same as that relied on by the UT as short a time as two months later to find that there was now a general Article 15(c) risk to civilians in Libya: see **ZMM [2017] UKUT 91 (IAC)** which was heard on 3 May 2017. The decision of the FtT judge is hereby set aside for material error of law.

### **Re-making the decision**

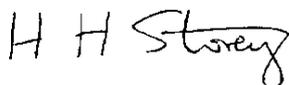
6. Having found a material error of law we turn to re-make the decision. We find that there is no evidence before us justifying a departure from the finding in **ZMM** that there is currently a general Article 15(c) risk to civilians in Libya and that the appellant is a civilian. He is thus entitled to humanitarian protection unless he can establish he is entitled to asylum.
7. In a letter explaining that neither the appellant nor anyone on his behalf would be attending, the appellant's representatives stated that they still relied on the grounds contending that the appellant was entitled to asylum status.
8. We do not find the appellant has established that he is entitled to asylum. His grounds fail to raise any effective challenge to the judge's adverse credibility findings as set out at paragraph 14. As regards the claim made in the grounds that there is clear evidence establishing a general risk of harm to members of the Tebu tribe, we find that claim to lack substantiation. Whilst we have set aside the decision of the FtT judge on the issue of general Article 15(c) risk, we see no basis for departing from his finding that the appellant had failed to substantiate his claim that members of the Tebu tribe are persecuted in Libya. The grounds fail to identify any report stating that. We have looked at the background evidence before the FtT judge and of course had also had regard to the evidential foundation for the conclusions of the UT in **ZMM**. The most the background evidence shows is that Tebu militias have been engaged in fighting; not that Tebu civilians have faced persecution.
9. For the above reasons we conclude that:

The decision of the FtT judge is set aside for material error of law.

The decision we re-make is to dismiss the appellant's asylum grounds of appeal but allow his appeal on humanitarian protection grounds only.

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

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 both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed

Date: 27 October 2017

Dr H H Storey  
Judge of the Upper Tribunal