



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/02595/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**Decision & Reasons  
Promulgated  
On 20 February 2018**

**On 12 December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES**

**Between**

**M. M.**  
(ANONYMITY DIRECTION MADE)

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Brakaj, Solicitor, Iris Law Firm  
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Libya who travelled to the UK using his own passport, lawfully endorsed with a Tier 4 visa, but was then refused entry because whilst he was outside the UK the licence granted to his college had been revoked. He then claimed asylum. That claim was refused on 1 March 2016. His appeal against the decision to refuse him protection status was then dismissed on all grounds by decision of First tier Tribunal Judge SPJ Buchanan, promulgated on 16 January 2017.
2. The Appellant was granted permission to appeal to the Upper Tribunal by decision of Upper Tribunal Judge Frances of 8 August 2017 on the sole ground that since

the Judge's decision had been promulgated on 28 June 2017 new country guidance on Libya had been published; ZMM (Article 15(c)) Libya CG [2017] UKUT 263. Arguably, although the Judge did not have the benefit of that guidance, his decision was therefore inconsistent with the assessment of the Upper Tribunal, so that the humanitarian protection ground of appeal should be allowed.

3. Thus the matter comes before me.

#### Error of law?

4. When the matter was called on for hearing Mr Diwnycz on behalf of the Respondent conceded that the Judge had, through no fault of his own (since the requisite evidence had not been placed before him), erred in his assessment of the situation within Libya at the date of the hearing. In the light of ZMM he conceded on behalf of the Respondent that the situation within Libya at the date of the hearing before the Judge was not materially different from the situation as it was assessed to be by the Upper Tribunal. Thus, it was conceded that at the date of the hearing before the Judge the violence in Libya had reached such a high level that a returning civilian would, solely on account of his presence in Libya, face a real risk of being subject to a threat to his life or person. No such concession was made by the Respondent before the Judge, and the evidence placed before the Upper Tribunal on this issue was not made available to him. Nevertheless it is accepted that his decision upon this ground of appeal cannot stand.
5. Ms Brakaj accepted that this was the sole ground upon which permission to appeal had been granted to the Appellant.
6. With the agreement of both parties I was therefore invited to set aside only the decision to dismiss the appeal on humanitarian protection grounds, and to remake the decision upon that ground, so as to allow the appeal on that ground alone. Thus the decision to dismiss the appeal on asylum and human rights grounds is confirmed.

#### **DECISION**

The Decision of the First Tier Tribunal which was promulgated on 16 January 2017 did involve the making of an error of law that requires the decision upon the humanitarian protection appeal to be set aside and remade.

The appeal is allowed on humanitarian protection grounds.

The decision to dismiss the appeal on asylum and human rights grounds is confirmed.

**Deputy Upper Tribunal Judge JM Holmes**

**Dated 13 December 2017**

**Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until the Tribunal directs otherwise the Appellants are granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

**Signed**

**Deputy Upper Tribunal Judge JM Holmes**

**Dated 13 December 2017**