



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/04658/2016

THE IMMIGRATION ACTS

**Heard at Liverpool
On 5th February 2018**

**Decision & Reasons Promulgated
On 26th February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**[A S]
(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel (Counsel)

For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Libya born on [] 1974. The Appellant had asked to be recognised as a refugee and applied for asylum in the United Kingdom on the basis that he had a well-founded fear of persecution in Libya on the basis of his imputed political opinion. He has an extensive immigration history set out at paragraph 4 of the Notice of Refusal. The Appellant's application was refused by Notice of Refusal dated 11th April 2016.
2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal P J Holmes sitting at Stoke-on-Trent on 9th May 2017. In a

decision and reasons promulgated 5th June 2017 the Appellant's appeal was dismissed.

3. The Appellant lodged Grounds of Appeal to the Upper Tribunal. Permission to appeal was refused by First-tier Tribunal Judge O'Garro on 28th June 2017. Renewed Grounds of Appeal were lodged to the Upper Tribunal on 25th July 2017.
4. On 25th September 2017 Upper Tribunal Judge Southern granted permission to appeal. Judge Southern noted that the grounds were lengthy and wide ranging and that on closer examination they may prove to be little more than expressions of disagreement with well-reasoned conclusions arrived at by a judge who has carried out a very careful examination of the evidence the parties chose to put before him. However Judge Southern did note that the Appellant had five children born in the UK who will be returning to Libya with the Appellant one of whom is now 8 years old and that it was arguable that the approach taken by the judge to the best interests of those children may be open to legitimate criticism.
5. Judge Southern noted that the new country guidance now available in *ZMM (Article 15(c)) Libya CG [2017] UKUT 263 (IAC)* was not before the judge and may well be of relevance in an area of law material to the outcome of this appeal.
6. The Secretary of State responded to the Grounds of Appeal under Rule 24 requesting an oral hearing on 11th October 2017. It is on that basis that the appeal comes before me to determine whether there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Ms Patel. Ms Patel is familiar with this matter having appeared before the First-tier Tribunal and being the author of the Grounds of Appeal. I note that there was in fact no representation on behalf of the Secretary of State before the First-tier Tribunal. He is today represented by her Home Office Presenting Officer Mr Bates.

Country Guidance

7. *ZMM (Article 15(c)) Libya CG [2017] UKUT 263 (IAC)* is authority for the proposition:

"That 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."

That authority of course was not before the First-tier Tribunal Judge.

Submissions/Discussion

8. Mr Bates concedes following the authority of *ZMM* it would be appropriate for the appeal to be allowed on humanitarian protection grounds pursuant to the authority and a finding under Article 15(c). Further he concedes

that any claim pursuant to Article 8 is influenced by the finding under Article 15(c) and it is hard to see bearing in mind those conclusions how it could ever be proportionate for young children to be returned at present to Libya.

9. Ms Patel takes me to paragraph 15 of her Grounds of Appeal pointing out that at paragraph 31 of his decision the First-tier Tribunal Judge has stated that he is satisfied that there is a state of internal armed conflict in Libya but has then gone at paragraph 33 to state that he is not satisfied the situation in the Appellant's home area shows indiscriminate violence of such severity to pose a threat to life or person generally and that neither does he find sufficient evidence that the Appellant and his family would be so vulnerable as to be under any individual real risk of serious harm from the general conditions of violence in that area. She submits that this fails to take into account the current country guidance but importantly that the judge has not engaged with or given reasons as to how the Appellant could return to his home area and whether in order to get there he would have to travel through areas that were the subject of internal armed conflict. She submits that this constitutes the material error of law.

The Law

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

12. I agree with the submissions made by Ms Patel. Whilst the judge has carried out a very thorough analysis and whilst I acknowledge that his

decision predates *ZMM* it is fair to say particularly when considering the decision in the round that the judge has failed to give reasons as to how the Appellant could return to his home area to give any detailed analysis as to whether in doing so he would have to travel through areas that were subject of internal armed conflict. The failure to engage with this issue constitutes a material error of law.

Re-Making of the Decision

13. Having found that there is a material error of law in the decision of the First-tier Tribunal Judge Mr Bates does not seek to persuade me further and is prepared to concede the position as is now set out in *ZMM* as being authoritative country guidance. I agree with that. In such circumstances I remake the decision allowing the appeal pursuant to Article 15(c).

No anonymity direction is made.

Signed

Date 23 February 2018

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT FEE AWARD

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris