



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01613/2015**

THE IMMIGRATION ACTS

**Heard at Bradford
On 7 December 2015**

**Decision & Reasons
Promulgated
On 12 February 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**AAA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Draycott, instructed by Ison Harrison, Solicitors
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, AAA, was born in 1979 and is a male citizen of Libya. He arrived in the United Kingdom in August 2014 and applied for asylum. By a decision dated 16 January 2015, the respondent refused to grant the appellant asylum and made a decision to remove him from the United Kingdom by way of directions under paragraphs 8-10 of Schedule 2 of the Immigration Act 1971. The appellant appealed against that removal decision to the First-tier Tribunal (Judge Shimmin) which, in a decision promulgated on 2 April 2015, dismissed the appeal on all grounds. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are three grounds of appeal. The first ground concerns the challenge to the judge's assessment of the credibility of the appellant's evidence. At [21] of the refusal letter, the respondent had made this concession:

I have considered your account of your harassment at work and whether to accept these aspects of your claim. It is considered that you met parts (i), (ii) and (v). However it has been concluded that you have not provided a coherent account of certain aspects of your claim. Therefore you have not met the criteria for part (iii) of paragraph 339L. In addition your failure to claim asylum straight away at London Heathrow on arrival has meant you have not met the criteria for part (iv). Paragraph 339L. Although you have not met these criteria I have considered that it would be nevertheless appropriate to accept this part of your claim. Therefore your account of your problems with the harassment at your work is accepted.

3. At [28], Judge Shimmin wrote:

The respondent accepts that the appellant is a Libyan national. It is also accepted that he was in the employment of [] and that he made complaints against them.

I could not be satisfied even to the lower standard on the evidence before me that the balance of the appellant's account was truthful [sic] for the following principal reasons.

4. At [40], the judge wrote

Weighing all the evidence for what it is worth and considering it cumulatively in the light of the challenges to it by the respondent I find the appellant has failed to prove to the required standard of reasonable likelihood that any of the facts he alleges are true apart from his claim to be of Libyan nationality and to have made complaints to his employer.

5. Under the heading "Evidence" the judge set out the particulars of the appellant's account. Amongst the complaints which the appellant had made to his company were complaints regarding problems with its organisational structure and supply chain. These were professional matters linked to the appellant's discharge of his duties for the company separate from those difficulties, the appellant claims to have suffered harassment at work. At [19], the judge noted that the account included a claim that,

The appellant suffered harassment at work. He was threatened by someone from the Administration Department in May 2014 and was told that he did not belong in the company and that he needed to be 'kicked from the window.'

6. Very soon after that, in June 2014, the appellant claimed that he was chased by men in cars including an individual holding a gun.
7. The "complaints to his employer" which the judge found the respondent accepted as a true part of the account related to the first in a sequence of events according to the appellant which may have led to the serious

incident of June 2014 which, in turn, led to the appellant leaving Libya to seek asylum in the United Kingdom. The first consequence of the complaints about the organisation of the company had been the harassment which the judge described at [19]. It is clear that the judge did not accept that that harassment had occurred. However, as can be seen from the passage of the refusal letter [21] which I have quoted above, the respondent had accepted that the appellant had suffered harassment. Mr Diwnycz, for the respondent before the Upper Tribunal, told me that, according to the record of proceedings on his file, there had been no attempt by the Presenting Officer before the First-tier Tribunal to withdraw that concession. It follows that Judge Shimmin has wrongly proceeded on the basis that he was required to make a finding of fact regarding the allegations of harassment when there was no need for him to do so. At [39], the judge noted that,

Whilst individually any one of the adverse credibility points might not, on its own, persuade me that the appellant was an incredible witness, when I consider the various points cumulatively, I come to the conclusion the appellant is not credible.

8. In what appears to have been a finely-balanced assessment of credibility, the error made by the judge as regards the claim of harassment may have distorted that assessment. Accordingly, I find that the decision should be set aside. Because the credibility assessment was cumulative, the only safe and proper course of action is for all the findings of fact of the First-tier Tribunal to be set aside also. There will need to be a new fact-finding exercise before a Judge of the First-tier Tribunal following which that Tribunal will re-make the decision.
9. The other grounds concern the weight placed by the judge upon the screening interview of the appellant and also the weight he has given to Section 8 of the 2004 Act. I have to say I find those grounds to be less persuasive. In any event, the decision must be set aside for the reasons which I have given above.

Notice of Decision

10. The decision of the First-tier Tribunal promulgated on 2 April 2015 is set aside. None of the findings of fact shall stand. The appeal should be returned to the First-tier Tribunal (not Judge Shimmin) for that Tribunal to re-make the decision.

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 their 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 20 January 2016

Upper Tribunal Judge Clive Lane