



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

Appeal Number: AA/01617/2015

THE IMMIGRATION ACTS

Heard at Manchester

**Decision and Reasons
Promulgated**

On 3 December 2015

On 26 February 2016

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**AA
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Madubuike, Counsel

For the SSHD: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. The appellant is a citizen of Libya. I have made an anonymity order as this decision refers to details concerning his asylum claim.

2. The appellant contends that he has a well-founded fear of persecution for reasons relating to an imputed political opinion. He claims that he has been targeted in Libya because he and his family were supporters of the Gadhafi regime. This claim was refused by the SSHD and the appellant appealed to the First-tier Tribunal.
3. In a detailed decision dated 28 April 2015 First-tier Tribunal Judge Lloyd-Smith dismissed the appeal. Judge Lloyd-Smith rejected much of the appellant's account as incredible and inconsistent. The appellant appealed against this in wide-ranging grounds. The majority of the grounds of appeal are taken up with disagreements and re-arguing the appellant's case. It is however possible to discern two alleged errors of law when the grounds are read together with the decision under appeal. Mr Harrison was content to interpret the grounds in a generous manner in the particular circumstances of this protection claim. First, the decision fails to address a central plank in the appellant's appeal – his claim that he was specifically targeted and attacked whilst at university in Libya. Second, the judge has failed to appreciate and / or take into account the appellant's clear evidence that he told untruths in his visa application form in order to get a visa to flee Libya for reasons relating to a fear of persecution.

Hearing

4. At the beginning of the hearing I indicated my preliminary view to Mr Harrison that Judge Lloyd-Smith erred in law in these two respects such that her decision should be set aside. Mr Harrison conceded that these amounted to material errors of law. I therefore did not need to hear from Mr Madubuike save to clarify that he agreed with Mr Harrison that the appropriate course was to remit the appeal to the First-tier Tribunal to make findings of fact afresh.

Error of law

5. As Mr Harrison conceded that there are material errors of law in the decision I can give my reasons briefly.
6. Judge Lloyd-Smith summarised the appellant's claim at [10]. At [10e] she states the following *"the appellant began university in October 2013 but was attacked on campus in January 2014 and accused of being part of the regime and his brother being a martyr"*. The SSHD also included this in her refusal letter in her summary of the appellant's claim at [Annex A, 3G]. The appellant dealt with this aspect of his account in some detail in his rebuttal statement dated 25 March 2015 at [6, 7, 17]. The attack on the appellant and its surrounding circumstances is a central aspect of the appellant's account. It explains why he felt particularly targeted over and above his family members and why he felt the need to go into hiding and flee Libya.

7. Whilst the judge has provided detailed reasons for her view that the appellant has provided inconsistent evidence and his credibility has been damaged [14-18] she has failed to address this central aspect of the appellant's evidence. I accept that passing reference has been made to it [14(d)] but the judge has not addressed any of the detail of this important aspect of his account. It is also concerning that the judge's passing reference to this feature of the appellant's account is based upon a fundamental misunderstanding of the appellant's case. The judge regarded the appellant's claim that he was attending university in Libya to be inconsistent with the following statement made by the appellant in an earlier application: "*I would like to study English language course to improve my English before starting university in my country*". This statement was made in his visa application form and not as the judge states [14(d)] in his screening interview. The reference provided by the judge is "R A10, q76". That part of the SSHD's bundle clearly refers to the application form for a visa to enter the UK as a visitor in order to study English, dated 3 April 2014. In his rebuttal statement the appellant made it clear that he did not tell the truth when completing the visa application form because his true intention was to escape harm in Libya. The appellant clearly admitted to inventing a number of matters to support his application for a visitor's visa in order to flee Libya. This explains the apparent inconsistency, yet the judge has failed to address this.
8. This is linked to the second material error of law, as conceded by Mr Harrison. The judge has drawn a number of adverse inferences from various inaccuracies and untruths in the appellant's visa application forms [14(a), (b), 16]. The judge concluded that the appellant used deception in the visa applications and lied to the entry clearance officer. This is of course factually accurate but does not of itself mean that his asylum claim is not reasonably likely to be true. The judge has effectively made adverse credibility findings on the basis of the use of lies that the appellant accepted he told during the process of escaping Libya. There has been no recognition by the judge that bona fide refugees often have little option but to travel under false pretences when fleeing persecution. Hence it is only with caution that there should be reliance on deception regarding entry clearance, when evaluating an asylum applicant's general credibility. In failing to recognise the need for caution and whether it should be applied to the instant case the judge has erred in law.
9. The judge also drew adverse inferences from the appellant's failure to provide detail of what happened in Libya in the initial account provided at the screening interview [17]. In response to the question what problems [the appellant faced in Libya] he said "*the unstable political circumstances in Libya*". This was followed up by this question and answer: "*Can you briefly explain why you cannot return to your home country? If I go back I will be killed due to the unstable political circumstances.*" The appellant was not invited to expand

upon this and it appears that no further questions followed, even though there are a number of further prompt questions open to the interviewer (see 4.2 of the screening interview). The judge seems to have made no allowance for the particular way that information was elicited at the screening interview (brief explanation only, no follow up questions) in contrast to the asylum interview and witness statements. Any comparison between the responses to initial queries and later responses must bear in mind the limited terms in which the initial questions are asked. In these circumstances it was unfair for the judge to draw adverse inferences from the lack of detail in the screening interview when contrasted with the detail provided by the appellant in his statements and during the course of his substantive interview.

10. I am satisfied that the errors of law identified above are material and justify the setting aside of the decision. I appreciate that the judge has provided other reasons for not accepting the appellant's evidence but it is difficult to separate the adverse findings, which are interlinked. I therefore find that the decision should be set aside and remade afresh.

Remittal

11. Both representatives agreed that the decision needs to be remade completely and that given the nature and extent of those findings, this should be done in the First-tier Tribunal. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal.

Decision

12. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
13. The appeal shall be remade by First-tier Tribunal de novo.

Directions

- (1) The appeal shall be reheard *de novo* by the First-tier Tribunal sitting in Manchester (TE: 2 hrs) on the first date available. Arabic interpreter necessary.
- (2) 14 days before the hearing date the appellant shall file and serve an indexed and paginated bundle (to replace all previous bundles) containing all evidence, including updated background evidence relevant to the rehearing.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
4 December 2015