



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

Appeal Number:
AA/10622/2014

THE IMMIGRATION ACTS

**Heard at: Manchester
Reasons Promulgated
On 21 June 2017**

**Decision &
On 23 June 2017**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**Mr E
(Anonymity direction made)**

And

The Secretary of State for the Home Department

Appellant

Respondent

**For the Appellant:
Immigration Law**

Mr Brown, Counsel instructed by Compass

Ltd

**For the Respondent: Mr Harrison, Senior Home Office Presenting
Officer**

DECISION AND REASONS

1. The Appellant is a national of Libya born in 1995. He appeals with permission¹ against the decision of the First-tier Tribunal (Judge

¹ Permission granted on the 14th March 2017 by First-tier Tribunal Judge Grant-Hutchinson

Cruthers) to dismiss his appeal² on asylum and human rights grounds.

Anonymity

2. This case concerns a claim for international protection. I have had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders and I consider it appropriate to make an order in the following terms:

“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background

3. It is not in dispute that the Appellant came to the United Kingdom in June 2014 having been given leave to enter as part of a group of soldiers in the Libyan army who were coming to the UK for training. Nor does it appear to be in dispute that he deserted: he claimed asylum on that ground on the 29th October 2014.
4. The Appellant was initially detained following his asylum claim. He was held at Harmondsworth immigration detention facility and when his claim for protection was refused his appeal was heard in the ‘fast track’ system. His appeal was dismissed by First-tier Tribunal Judge Froom on the 16th December 2014. On the 6th October 2015 that decision was set aside by order of the President of the First-tier Tribunal Mr M. Clements. This followed the decision of the High Court to the effect that the fast-track system was unlawful for unfairness. At that time the address held by the Tribunal for the Appellant was in Tameside, and the solicitors on record were Lawrence Lupin Solicitors in London.
5. When the matter came before Judge Cruthers there was no appearance by or on behalf of the Appellant. His clerk contacted Lawrence Lupins who by way of fax indicated that they were no longer representing the Appellant. They did not indicate when

² Brought against a decision to remove pursuant to s10 of the Immigration and Asylum Act 1999, dated 1st December 2014.

instructions ceased. Judge Cruthers found that notices of hearing had been sent to the Appellant's last known address – in Tameside – and to Lawrence Lupins. Being satisfied that there had been good service he proceeded to hear, and dismiss, the appeal in the Appellant's absence.

The Challenge

6. The first ground of appeal is that there has been a procedural unfairness. The Appellant has, through no fault of his own, missed the opportunity to be present at his appeal hearing. By the time that the notices of appeal had been sent out he had been 'dispersed' by NASS to other accommodation. He had been expecting that his then solicitors would have informed him of the hearing date. They had not. He understood that the Home Office would be aware of his change of address, since it was a NASS decision to move him. He asks that the matter be remitted to enable him to take part in the proceedings.
7. The second ground is that the Tribunal erred in following the findings in AT & Others v Secretary of State for the Home Department (Libya CG) [2014] UKUT 00318 (IAC) insofar as they related to Article 15(c) of the Qualification Directive. It is submitted that by the time that the Tribunal dealt with the appeal the situation in Libya had markedly deteriorated and that even on the basis of the Respondent's country background information report (the only 'objective' material before the Tribunal) there should have been a more thorough evaluation of whether he would face a risk, particularly as a recruit who had deserted.

The Response

8. The Respondent accepts that the first ground of appeal is made out. The Appellant was moved by NASS and it would seem that his former solicitors had failed to inform the Tribunal when they were no longer instructed. That placed the Tribunal in a difficult position on the day but the Appellant could not be blamed for their failings. It would be in the interests of justice to remit the matter so that the appeal can be heard afresh.
9. In respect of AT & Others the Respondent points out that at the date of the appeal in this case, it was still country guidance. The First-tier Tribunal determination is dated the 19th August 2016, three days before the Tribunal heard the appeal in FA (Libya: art 15(c)) Libya CG [2016] UKUT 00413 (IAC) which was to overturn AT on the matter of Article 15(c). In light of the procedural unfairness point, and the decision in FA, the Respondent did not however oppose the matter going back to the First-tier Tribunal for remaking.

Decisions

10. The making of the First-tier Tribunal decision involved an error in approach such that the decision is set aside by consent.
11. The decision in the matter is to be remade *de novo* in the First-tier Tribunal.
12. There is an order for anonymity.

Upper Tribunal Judge Bruce
21st June 2017