



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: PA/02297/2015**

Appeal

THE IMMIGRATION ACTS

Heard at Stoke-on-Trent

On 27 November 2017

**Decision & Reasons
Promulgated**

On 22 December 2017

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MRS AMIRA KHAMES MOH ABDALLA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The appellant attended in person

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

DECISION AND REASONS

1. The appellant is a citizen of Libya, born on 6 January 1978. She seeks to appeal against the decision of the respondent made on 15 October 2015 refusing to grant her asylum or other protection.
2. The appellant entered the United Kingdom in 2009, is married and has two children, one born on 2014 and one in 2016.
3. On 24 April 2015 she claimed asylum, which was refused by the respondent in a decision dated 15 October 2015. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Pooler on 16 December 2016. In a determination promulgated on 5 January 2017, that claim was refused in all respects.

4. Challenge was made to that decision, with particular reference to the best interests of the children and to an error in relation to the status of her husband.
5. Permission to challenge the decision was granted and thus the matter came before the Upper Tribunal to determine whether or not an error was made.
6. The matter came before me for hearing on 19 August 2017. It seemed to me that the real issue that emerged was one of the safety of return. The account of the appellant, which was found credible, was that she and her family had experienced threats and violence from certain people in Libya in the various locations in which she had resided. It was the understanding of Judge Pooler, and indeed presented as a fact at the hearing before me, that the husband had been granted humanitarian protection and that there were areas of Libya to which he too could not safely return.
7. The appeal was allowed to the extent that the decision of the First-tier Tribunal Judge was set aside to be remade by myself on the issue of safety of return.
8. Thus the matter comes before me for hearing on that issue.
9. In terms of the husband, details have been obtained as to the circumstances in which he obtained his leave to remain in the United Kingdom. There was a letter from the UK Border Agency dated 21 September 2012.
10. He had applied for asylum in the United Kingdom citing a fear of being arrested and killed by rebels in Libya because he had been a member of a former revolutionary committee under the Gaddafi regime. His claim for asylum was rejected, his lack of credibility being a powerful factor. It was also found that he did not qualify for humanitarian protection.
11. Thus his leave to remain was based on another discretionary basis and it is not entirely clear what that was.
12. Since the previous hearing there has been an important country guidance decision in **ZMM (Article 15(c)) Libya CG [2017] UKUT 263 (IAC)**. In that decision the Upper Tribunal considered the situation in Libya, particularly faced by civilians and the overall conclusion was as follows:-

“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.”

13. The appellant was unrepresented before me at the hearing and spoke very little English. She was assisted to some extent by the presence of her husband.
14. As Mr Bates most realistically conceded, there was little merit in considering the issue of internal relocation and risk in the light of the findings of a country guidance case. It did not matter where in Libya the appellant were to return to, with or without a husband, the same considerations would apply. He conceded that in the light of the country guidance case it would fall to the Secretary of State to grant humanitarian protection to the appellant and presumably also to her husband.
15. In terms of Article 8 it was again somewhat academic to consider the issue of return. Clearly it would not be in the best interests of the children to be returned to a country where it was found that there would be a risk to anyone who was returned.
16. In those circumstances the appellant's appeal in respect of asylum is dismissed. Given the decision of the Upper tribunal in the Country guidance case that the appellant cannot safely return to be on account of country conditions generally, her claim to be in need of humanitarian protection succeeds. To that extent the appeal is allowed.
17. In respect of Article 8 that appeal is also allowed in line with the issue of humanitarian protection.

Notice of Decision

18. The appellant's appeal is allowed in terms of humanitarian protection and Article 8 of the ECHR.

No anonymity direction is made.

Signed



Date 12 December 2017

Upper Tribunal Judge King TD