



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10286/2016

THE IMMIGRATION ACTS

Heard at North Shields
On 10th November 2017

Decision Promulgated
1st December 2017

Before

DEPUTY JUDGE FARRELLY OF THE UPPER TRIBUNAL

Between

MR.F.E.G
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs L Brakaj of Iris Law Firm.

For the Respondent: Mrs Pettersen, Home Office Presenting Officer.

DETERMINATION AND REASONS

Introduction

1. The appellant is a national of Libya who claimed protection. He said he worked in Tripoli as an accountant for the former regime and continued in this employment afterwards. The leader of a local militia pressurised him into manipulating information. He refused and because of this was detained and abused. When released he left his home country. He claims that if returned he would be at risk from this militia and for

having an imputed political opinion. The respondent rejected his claim on credibility grounds.

2. His appeal before Judge the First tier Tribunal Thorne was dismissed. The judge found his account to be plausible and consistent with the country information. The judge accepted he worked in Tripoli as an accountant under the former regime and thereafter. The judge also accepted that he was approached by militia and when he refused to cooperate he was detained and tortured. The identity of the person he named as being the leader of the militia was confirmed by an Internet search. A letter from this individual was accepted as being reliable. The respondent had rejected his claim of imprisonment as the country information indicated the facility had been abandoned. However, further information produced led the judge to conclude it had been reinstated. In summary, the judge accepted the appellant's underlying claim.
3. The judge went on to suggest that because he was released and was able to leave Tripoli he was no longer of interest to the militia. Consequently, the judge did not see a risk on return. Regarding the general risk from the country situation the judge stated they were bound by AT and others (article 15 (c) risk categories) CG [2014] UKUT 00318 and others. No other basis was seen for allowing the appeal.
4. The application for permission to appeal was based upon the subsequent country guidance on the 15(c) risk provided by FA (Libya: art 15(c)) Libya CG [2016] UKUT 00413. A further ground was that given the positive credibility findings the appellant's association with the formerly leader, the late Pres Gaddafi, meant he was in a particular risk category.

Consideration.

5. FA (Libya: art 15(c)) Libya CG [2016] UKUT 00413 at para 11 referred to numerous changes in Libya which were sufficient to render unreliable the guidance on art 15(c) given in AT. The Upper Tribunal advised that the risk should be determined on a case-by-case basis until general up-to-date guidance was again published. This was promulgated on 7 September 2016 six months before the decision was promulgated in this appellant's case. The Upper Tribunal has now given general country guidance in ZMM (article 15 (c)) Libya CG [2017] UKUT 263. The conclusion was 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.
6. First-tier Judge Thorne. Materially erred in law in stating that they were bound by AT instead of considering the individual features of the appellant's situation. Consequently, the decision cannot stand. There is no need for a further hearing because the decision can be remade and

allowed on the 15 (c) risk in light of on the basis of ZMM (article 15 (c)) Libya.

7. Mrs Brakaj in pursuing her client's best interests also argued that he should be entitled to the protection of the Refugee Convention. The application for leave in this regard refers to FA which deals with 15 (c). I believe this was cited in error on this point and should have read AT and Others (Article 15c; risk categories) Libya CG [2014] UKUT 00318 (IAC) .Para 5 of the head note of that decision makes the point the majority of the population of Libya either worked for or had some association with the former regime. Such employment or association alone was not sufficient to establish a risk of persecution or Article 3 ill-treatment on return.
8. The appellant had been abroad studying when the regime fell and was able to return and continue in his employment. The difficulties he experience from the militia arose in 2015. At paragraph 79 the judge said he did not fall into one of the risk categories. This was in assessment open to the judge on the evidence. Consequently, that aspect of the decision shall stand.

Decision.

The decision of First tier Judge Thorne dismissing the appeal materially errs in law and is set aside. I re-make the decision and allow the appeal on the basis of article 15 (c).

Deputy Judge Farrelly of the Upper Tribunal
10th November 2017