



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

Appeal Number: PA/12029/2016

THE IMMIGRATION ACTS

**Heard at Birmingham
On 11 August 2017**

**Decision & Reasons Promulgated
On 16 August 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**AGN
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Blair, instructed by Hasan Solicitors

For the Respondent: Mr Mills, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, AGN, was born in 1971 and is a male citizen of Libya. Having accepted submissions made by the appellant in July 2014 as a fresh claim, the respondent refused that claim by a decision dated 18 October 2016. The appellant appealed to the First-tier Tribunal (Judge Moan) which, in a decision promulgated on 28 April 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I was assisted by both representatives at the Upper Tribunal hearing, but in particular Mr Mills, who appeared for the respondent. He told me that the Secretary of State considered that the judge had erred in law because it was not clear that the judge had applied the correct standard of proof. At [28], for example, the judge had stated that he was “satisfied, on balance, that the appellant’s brother works for the SDF ...”. Such occasional infelicities of expression in the course of an analysis may be excused if it is clear from a decision that the judge was aware of and indicated clearly that he/she had applied the correct standard of proof. This was not such a case. Setting out “the applicable law” the judge wrote at [9]:

The question of whether a person has a well-founded fear of persecution for a Geneva Convention reason will be looked at in the round in the light of all the relevant circumstances and judged against the situation as at the time of the appeal hearing.

3. Whilst there was nothing wrong with that statement, it does not indicate the correct standard of proof in any asylum appeal. My reading of the decision leads me to believe that the judge has applied a standard of the balance of probabilities rather than that of a reasonable likelihood. In the circumstances, I set aside the decision of the judge and have re-made the decision.
4. In re-making the decision, I retain the finding which the judge made at [28] that the appellant’s brother works for the SDF (Special Deterrent Force). Mr Mills did not object to my doing so. The other findings of the judge are set aside. I am aware that by preserving that finding I have done so notwithstanding the fact that the same paragraph contains the error of law which I have identified above. However, in the light of Mr Mills’ agreement, I am prepared to retain the finding.
5. Since the First-tier Tribunal issued its decision, country guidance jurisprudence for Libya has moved on. We now have the benefit of the Upper Tribunal’s decision in *ZMM (Article 15(c)) Libya* CG [2017] UKUT 263 (IAC). The head note reads 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.”

6. In the light of *ZMM*, I allow the appeal on humanitarian protection grounds.
7. The appellant wishes to pursue his asylum appeal. Given that the judge’s error goes to the nature of his credibility findings, there is no alternative but for there to be a fresh fact-finding exercise which is best conducted in the First-tier Tribunal.

Notice of Decision

8. The decision of the First-tier Tribunal promulgated on 28 April 2017 is set aside. None of the findings of fact shall stand save for the finding [28] that the appellant's brother works for the SDF (Special Deterrent Force).
9. I have re-made the decision in respect of humanitarian protection. The appellant's appeal is allowed on humanitarian protection grounds.
10. The appeal on asylum and human rights (Articles 2/3/8 ECHR) grounds shall be determined in the First-tier Tribunal (not Judge Moan) to which Tribunal this appeal is now returned.

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 his 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 15 August 2017

Upper Tribunal Judge Clive Lane

No fee is paid or payable and therefore there can be no fee award.

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 15 August 2017

Upper Tribunal Judge Clive Lane