



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10676/2016

THE IMMIGRATION ACTS

Heard at Liverpool
On 27th September 2017

Decision & Reasons Promulgated
On 12th January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MSN
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr. J Harrison; Home Office Presenting Officer

For the Respondent: Ms. R Evans; WTB Solicitors

DECISION AND REASONS

1. The appellant before me, is the Secretary of State for the Home Department. However, for ease of reference, in the course of this decision I shall adopt the parties' status as it was before the First-tier Tribunal ("FtT"). I shall in this decision, refer to MSN as the appellant and the Secretary of State as the respondent.

2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.
3. This is an appeal against a decision by FtT Judge Norton-Taylor promulgated on 2nd March 2017. The Judge allowed the appeal on asylum, Article 3 and humanitarian protection grounds.

Background

4. The appellant is a national of Libya. He first entered the UK in 2010 with a visit visa. In 2012, he claimed asylum. That claim was refused and an appeal to the FtT (AA/07245/2013) was dismissed for the reasons set out in a decision promulgated on 13th September 2013. The conclusions of the FtT Judge in the September 2013 decision are summarised at paragraphs [4] to [6] of the decision of FtT Judge Norton-Taylor and I do not repeat them here. It is sufficient to note that the FtT Judge made adverse credibility findings and roundly rejected the account relied upon by the appellant.
5. On 9th February 2014, the appellant was removed to Tripoli. The appellant returned to the UK, using his own passport, on 14th October 2014 and claimed asylum on 27th October 2014. The claim was refused for the reasons set out in a decision dated 16th September 2016 and it was that decision that was the subject of the appeal before FtT Judge Norton-Taylor. A summary of the appellant's account of events when he returned to Tripoli in 2014, is set out at paragraph [10] of the FtT Judge.

The decision of the First-tier Tribunal

6. The appellant was represented and gave evidence. The appellant's evidence is set out at paragraphs [18] to [25] of the decision of the FtT Judge. The Judge's findings and conclusions are to be found at paragraphs [34] to [92] of the decision. The Judge noted at paragraph [34] of his decision, that the findings of the FtT Judge previously in 2013 represent the starting point for his assessment of the claim and the appellant's credibility. The Judge then addressed in his decision the evidence now relied upon by the applicant.
7. The FtT Judge found, at [41], that the arrest warrant now relied upon by the appellant, is not a reliable document for the numerous reasons set out at paragraphs [42] to [52] of his decision. The Judge found that the burial document relating to the appellant's brother takes his claim no further for the reasons set out at paragraph [53] of his decision. At paragraph [54], the Judge states:

"Taking all of the above into account, I find for myself that the Appellant's account of past events relating to his circumstances and those of his father, together with the claimed adverse consequences arising therefrom, is untrue. There is nothing to indicate that the 2013 findings are flawed, and there is in reality no new reliable evidence."

8. At paragraphs [55] to [74] of his decision, the Judge addresses the appellant's account of events upon return to Tripoli in 2014 and his subsequent return to the UK on 14th October 2014. The Judge found, at [56], that the appellant was removed to Tripoli on his own passport and at [57], found that the appellant would have been sent back with his possessions including papers relevant to his failed asylum claim in the UK. The Judge found, at [58] to [61], that it is reasonably likely that the appellant was initially stopped on arrival and taken by members of the Zintan militia, as claimed, and a baggage search was likely. At [63], the Judge found that the militia would not have been able to read most if not all of the English-language documents in the appellant's possession, but it is credible that someone would have been sought to translate these documents. The Judge found, at [64], that the militia would also have found in the appellant's

possession, the identity cards and employer's letter that stated that the appellant had been an employee of the Gaddafi regime.

9. At paragraph [67] of his decision, the Judge states:

"I find that it is reasonably likely that the Appellant was held for a relatively short time and ill-treated in terms of being hit. I find that the presence of the documents in the Appellant's possession, in combination with a general desire to check all returnees and the ability to act arbitrarily and with impunity, go to make this particular aspect of the Appellant's case credible."

10. For the reasons set out at paragraphs [69] to [74], the Judge did not accept that the appellant was as badly treated as he had claimed, and he rejected the appellant's account of what had occurred after his brief detention by the militia. The Judge states at [68]:

"However, I do not accept that the Appellant was as badly treated as he claims, nor do I accept any other material aspect of what he claims occurred after his brief detention by the militia. I do not accept that the militia said anything to him about his father, nor do I accept that he was accused of being a Gaddafi spy. I do not accept that he was hospitalised. My reasons for these findings are as follows."

11. The Judge's conclusions on the protection claim are set out at paragraphs [75] to [92] of his decision. At paragraph [85] of his decision, the Judge concluded that the appellant would be at risk of persecution, Article 3 ill-treatment and/or serious harm under Article 15(b) and/or Article 15(c) violence on return. The Judge states at paragraphs [88] and [89]:

"The Appellant would return to Libya as someone who does not have a high profile past with the Gaddafi regime. He is not, on his own account, anti-Gaddafi. He is, though, a person who has left Libya twice and been removed from the United Kingdom twice. He has claimed, twice, that he is pro-Gaddafi, and has documents in support of this. He must tell the truth about why he has been in the United Kingdom and what has occurred here to whomever asks. It is of course the case that his claims have been rejected in this

country. In many countries, this would not necessarily raise any problems on return to a country: an individual must be truthful about what happened to his case. However, this Appellant would walk into a situation of opposing armed and extremely dangerous militia, all acting with arbitrary violence and impunity.

It is likely that he will be stopped and questioned on return. This is significantly more likely now than it was in 2014, given the deteriorating security situation. There is a reasonable likelihood that the Zintan militia are in charge of the airport. They would perceive the Appellant as being sympathetic to the old regime because of his previously employment (even at a low level), the nature of his two protection claims, and/or his repeated desire to 'flee' the country, the implication being that he was either failing to support the Zintan cause or was trying to escape adverse interest from them."

12. At paragraph [91], the Judge found that if detained, there is clearly a risk of ill-treatment and a sufficient nexus between the ill-treatment and perceived political opinion to engage the Refugee Convention. In any event, Article 3 and Article 15(b) apply, or alternatively, by a narrow margin, the appellant can stand himself out from the civilian population as a whole and succeed under Article 15(c).

The appeal before me

13. Permission to appeal was granted by First-tier Tribunal Judge Page on 28th June 2017.
14. The respondent contends that the FtT Judge has failed to provide adequate reasons for concluding that the appellant will be at risk upon return to Libya. It is said that in light of the credibility findings made, the Judge erred in concluding that the appellant will be at risk upon return for a Convention reason and that the Judge fails to identify anything beyond the two failed asylum claims made by the appellant in the UK, that would place the appellant at risk upon return, such that the Judge erred in his conclusion that the appellant is entitled to protection under the Refugee Convention or requires Humanitarian Protection. Before me, Mr Harrison relied upon the grounds of appeal and submitted that the appellant is someone against whom there have been a number of adverse credibility findings.

He maintains the Judge fails to give sufficient reasons for his conclusion that the refugee convention is engaged or that the appellant is exposed to a risk upon return.

15. The appellant has filed a rule 24 response dated 20th September 2017. The appellant submits that although the Judge did not accept everything that was said by the appellant, the FfT Judge has given sufficient reasons as to why the appellant faces a real risk upon return to Libya, and why that risk is for a convention reason. The appellant submits that the Judge identifies that there is a real likelihood from the appellant's profile that he would upon being stopped and questioned by the Militia in Tripoli, come to their adverse interest, and the Judge found that there is a sufficient nexus between the ill-treatment that the appellant will face if detained, and his perceived political opinion, to engage the Refugee Convention. Ms Evans submits that the Judge made a number of findings in the course of his decision, accepting some aspects of the appellant's account of events following his return in 2014, and rejecting some aspects of that account. She submits that upon the findings made at paragraphs [88] and [89] of the decision in particular, it was open to the Judge to conclude that if detained, there is clearly a risk of ill-treatment, and there is a sufficient nexus between that ill-treatment and the appellant's perceived political opinion so as to engage to Refugee Convention.

Discussion

16. It is right to note that although the Judge of the FfT rejected part of the account relied upon by the appellant of events in 2014, the Judge found that the Appellant was initially stopped on arrival and taken by members of the Zintan militia, as he had claimed. Although the Judge did not accept that the appellant had been treated as badly as he had claimed, the Judge found that the appellant was held for a relatively short time, and ill-treated in terms of being hit. The Judge found that upon return now, the appellant would walk into a situation of opposing armed and extremely dangerous militia, all acting with arbitrary violence and impunity. The Judge found that "*..It is likely that he will be stopped and questioned on*

return...”, and that this is significantly more likely now, than it was in 2014, given the deteriorating security situation. The Zintan militia would perceive the Appellant as being sympathetic to the old regime because of his previous employment (even at a low level), the nature of his two protection claims, and/or his repeated desire to ‘flee’ the country. The findings made by the FtT Judge are not challenged.

17. In my judgement, the FtT Judge carefully considered the evidence before him. Having found, at [89], that it is likely that the appellant will be stopped and questioned on return, in my judgement it was open to the Judge to find that if detained, there is clearly a risk of ill-treatment. In reaching that conclusion, the Judge considered the objective evidence before him. It was open to the Judge to find that there is a sufficient nexus between the ill-treatment and the perceived political opinion of the appellant to engage the Refugee Convention.
18. It is now well established that although there is a legal duty to give a brief explanation of the conclusions on the central issue on which the appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the Judge. Here, it cannot be said that the Judge's analysis of the evidence is irrational or perverse. I am satisfied that the Judge's findings and conclusions are sufficiently reasoned, and it was open to him on the evidence, to allow the appeal on refugee, Article 3 and humanitarian protection grounds for the reasons given.
19. I should add that since the decision of the FtT Judge, and the grant of permission, there has been further Country Guidance. In **ZMM (Article 15(c) Libya CG [2017] UKUT 00263 (IAC)**, the Upper Tribunal held 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.

20. The question of whether a person is at risk in Libya for the purposes of Article 15(c) must be determined on the basis of the evidence in the appeal. On any view of the facts as found by the FtT Judge, it cannot in my judgement be said that the appellant would not be at real risk of being subject to a threat to his life or person solely on account of his presence in Libya. ZMM was not decided until after the decision was promulgated, but has held that there is a generalised risk to Libyan citizens such that they ought to be granted humanitarian protection.

Notice of Decision

21. The appeal is dismissed.

Signed

Date 6th January 2018

Deputy Upper Tribunal Judge Mandalia

FEE AWARD

No fee is payable and there can be no fee award.

Signed

Date 6th January 2018

Deputy Upper Tribunal Judge Mandalia