



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

Appeal Number: PA/12546/2016

THE IMMIGRATION ACTS

**Heard at Manchester
On 16 January 2018**

**Decision and Reasons
promulgated
On 27 February 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

FMM

(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Singh instructed by Greater Manchester Immigration Aid Unit

For the Respondent: Mr A McVeety Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Devlin who in a decision promulgated on 5 June 2017 dismissed the appellant's protection and human rights claims.

Background

2. The appellant is a female national of Libya born on [] 1990. The Judge sets out her immigration history at [3 - 9] of the decision under challenge.
3. The Judge considered the evidence in support of the appellants claim to face a real risk on return from her family who she suspected had discovered she had a relationship with a Libyan man and the general risk based upon country conditions on return to Libya.
4. The Judge sets out findings of fact from [121] of the decision under challenge. At [133] the Judge concludes that although satisfied one part of the appellants claim was, to the lower standard, likely to be true the Judge could not accept that other aspects of the account were true as set out at [133 (i) - (vii)]. At [147] the Judge therefore concludes he could not be satisfied there was a real risk that refusing the appellant's appeal would result in her being required to return to Libya in breach of the Refugee Convention.
5. The Judge thereafter considered an entitlement to Humanitarian protection setting out the relevant paragraphs of the Home Office country information guidance for Libya dated January 2017. Having done so the Judge concluded he was not satisfied there are no areas of Libya to which the appellant could be safely returned or that she cannot travel to without real risk of serious harm from indiscriminate violence. The Judge records at [153] that he was advised by the Presenting Officer that there was a moratorium on removals to Libya at that stage. The Judge therefore concluded he could not be satisfied the appellant met the requirements of paragraph 399C of the Immigration Rules and was therefore not entitled to a grant of Humanitarian protection.
6. The Judge concluded the appellant not established a breach of article 3 ECHR and by reference to article 8, both under the Immigration Rules and outside the Rules, that the respondent's decision was proportionate as the appellant established no entitlement to remain on this basis.
7. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 30 October 2017.
8. The application is opposed by the respondent in a Rule 24 response dated 17 November 2017.

Error of law

9. The Judge referred to the country guidance cases of *AT and Others (Libya) [2014] UKUT 00318* and *FA (Libya) [2016] UKUT 413*. In *FA* the Upper Tribunal found (i) the question of whether a person is at article 15(c) risk in Libya should, until further Country Guidance, be determined on the basis of the individual evidence in the case, and (ii) that that decision replaced *AT and Others* in respect of an assessment of the article 15(c) risk.

10. There is now a further country guidance case relating to article 15(c) risk in relation to Libya. In *ZMM (Article 15 (c)) Libya CG [2017] UKUT 263* it was held 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.
11. *ZMM* was heard on 3 May 2017 and the decision handed down on 28th June 2017. The material considered by the Upper Tribunal was therefore the same material available to the First-tier Tribunal although that appeal was heard on 5 April 2017 but did not hand down its decision until 5 June 2017. The appellant in the application for permission to appeal criticises the Judge for not taking a proper holistic view or assessment of the available evidence when concluded that no article 15 (c) risk arises.
12. The appellant also criticises the Judge for failing to properly factor into the equation that the appellant will be returned to Libya as a single woman.
13. The Judge rejected the appellant's claim to have no family in Libya and the October 2014 country information and guidance on women is to be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/566173/CIG_-_Libya_-_Women.pdf
14. In *AT and Others (Article 15c; risk categories) Libya [2014] UKUT 318 (IAC)*, which although no longer a country guidance case on the Article 15(c) risk is still country guidance so far as the categories of those entitled to asylum are concerned, it was held that whilst Libya is a male-dominated society and there is evidence of discrimination and violence against women and poor recognition of women's rights, being female does not per se establish a risk on return. However, taking into account all the circumstances, including a woman's age, health, level of education and economic status, one or more of the following characteristics or factors are likely, depending on the circumstances, to be significant in relation to the assessment of risk on return for a woman: (i) African ethnicity; (ii) Being a victim of sexual violence, including having been raped by soldiers loyal to the Qadhafi regime or by other combatants; or (iii) Being a woman accused or suspected of sexual misdemeanours or offences against family honour.
15. The key finding made by the Judge in which aspects of the appellants claim were accepted or rejected is [133] where the Judge writes:
 133. I find that although I am satisfied that the Appellant was sexually active in October 2013, I cannot be satisfied, even to the lower standard of proof, that any other aspect of her account is true. In particular, I cannot be satisfied that:
 - (i) the Appellant had a relationship with a Libyan national called Ahmed Omar;
 - (ii) the person with whom she had sexual relations around October 2013, was a Libyan national, or returned to Libya, in December 2013;

- (iii) the Appellant's cousin Mumtaz Mohamed told the Appellant's brother Fisel that the Appellant had a relationship with Ahmed Mohamed in the United Kingdom;
 - (iv) the brother Feras had told her that their parents had told him that Fisel had told them that the Appellant had a relationship with a man called Ahmed Omar in the United Kingdom, or that Feras denied the claim;
 - (v) the Appellants mother and father insisted on her returning to Libya, so that he could question her about her relationship with Ahmed Omar;
 - (vi) the Appellant's sister, Farah, asked her why their father was angry at her; or,
 - (vii) she no longer has regular contact with her family.
16. The Judge recognised that there remains a possibility the appellant may be questioned about her activities in the UK by her family on return to Libya but was not satisfied that lying about what may have happened breached the HJ (Iran) principles. Although the Judge makes no specific finding it does not appear that a person's personal sexual activities fall into a characteristic or status that they could or should not be expected to deny because it was so closely linked with their identity or were an expression of a fundamental right, in order to avoid persecution. This is not a sexual orientation case.
17. The Judge it [137] finds "*however, there seems to me to be a more fundamental objection to the Appellants claim - that is that the Appellant has been comprehensively disbelieved, and seeks to rely on general evidence, which is not sufficiently solid as to establish her claim*".
18. The adverse credibility findings and rejection of the core of the appellants claim have not been shown to be outside the range of findings reasonably open to the Judge on the evidence. The Judge clearly considered the evidence with the required degree of anxious scrutiny and has given adequate reasons for the findings made. The appellant in her claim did not express a fear of gender-based violence and indeed returned to Libya in 2013 of her own volition. There is no evidence before the Judge to show the appellant was a victim of gender-based violence. Mr McVeety referred the tribunal to the fact there was no mention of problems regarding her family until after the appellant's first submissions had been rejected. The finding by the Judge that the appellants claim that the family wanted her dead through an honour killing was not accepted and no arguable legal error sufficient to interfere with this aspect of the claim or the adverse credibility findings has been made out.
19. What is accepted is that following the decision in *ZMM* the situation in Libya has deteriorated to an extent that the appellant would, solely on account of her presence in Libya, face a real risk of being subject to a threat to her life or person and therefore entitled to a grant of humanitarian protection.

Discussion

- 20. Whilst the rejection of the asylum claim has not been shown to be infected by arguable legal error material to that aspect of the decision, I find the decision in relation to Humanitarian protection is affected by legal error to the extent that that aspect of the decision must be set aside. The factual findings made by the Judge are preserved
- 21. The Upper Tribunal is in a position to proceed to remake the decision which, in light of *ZMM*, is that the appeal is allowed on humanitarian protection grounds only.

Decision

- 22. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is allowed.**

Anonymity.

- 23. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Hanson

Dated the 22 February 2018