



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

Appeal Number: HU/11484/2016

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 13 December 2018**

**Decision & Reasons Promulgated  
On 22 February 2019**

**Before**

**THE HON. MR JUSTICE LANE, PRESIDENT  
UPPER TRIBUNAL JUDGE H MACLEMAN**

**Between**

**MUMEN A H H DARMISH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Winter, Latta & Co Solicitors

For the Respondent: Mr A Govan, Senior Presenting Officer

**DECISION AND REASONS**

1. This is an appeal brought by the appellant against the decision of the First-tier Tribunal which, in a determination that followed a hearing in Glasgow on 3 November 2017, dismissed the appellant's appeal on human rights grounds. The appeal was brought by the appellant following the refusal by the respondent of a human rights claim. The appeal accordingly was made under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002 (as amended). It was not brought against the refusal of a protection claim. That is important in our view because section 82(1)(b) creates a discrete right of appeal against the refusal of such a claim.

2. It is conceded by the respondent that the decision of the First-tier Tribunal in the human rights appeal contains an error of law and should be set aside. A clear implication to that effect was communicated by Mr Govan on behalf of the respondent as long ago as 27 June 2018, when he wrote to the First-tier Tribunal to state that the respondent would be prepared to grant leave commensurate with, in effect, the allowing of the human rights appeal.
3. Mr Winter, who appears on behalf of the appellant, has sought to encourage the Upper Tribunal to adopt a stance whereby it might entertain the ground that the appellant is entitled to humanitarian protection. Mr Winter, as he fairly acknowledges, faces a difficulty in that regard, given that a human rights appeal and a protection appeal are two different things, clearly articulated as such by Parliament in section 82 and also, when one turns to look at provisions regarding the grounds of appeal, in section 84. There is, accordingly, no scope in the Upper Tribunal's view for the application of the legislation or case law that may in certain circumstances enable new matters to be raised in respect of a particular appeal because Mr Winter's submission, if correct, would turn a human rights appeal into a protection appeal, which it is not. That is not, of course, to say that somebody cannot make both a protection claim and a human rights claim and receive from the Secretary of State both a refusal of the human rights claim and the refusal of a protection claim. That is not, however, the position in the present case.
4. So far as humanitarian protection is concerned, as we explored in argument with Mr Winter and as we now record, it is open to the appellant, notwithstanding that he will enjoy leave to remain on a human rights basis, to make a protection claim to the respondent, by reference to the humanitarian position as it is in Libya. If that claim is rejected, then the appellant has a right of appeal under section 82(1)(a) of the 2002 Act to the First-tier Tribunal, subject to certification.
5. The decision of the Upper Tribunal is accordingly as follows. By consent, it is found that the First-tier Tribunal erred in law. The judge failed to have regard to relevant country guidance case law, which affected the outcome of the appeal.
6. We accordingly set aside the decision of the First-tier Tribunal and, compatibly with the stance of the respondent as set out in Mr Govan's letter of 27 June 2018, we substitute a decision of our own allowing the appellant's appeal on human rights grounds.

Signed

Date 20 December 2018

The Hon. Mr Justice Lane  
President of the Upper Tribunal  
Immigration and Asylum Chamber