



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/07927/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 2 March 2015

Determination Promulgated
On 25 March 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department

Appellant

and

Salih Bilqasim Saad
[No anonymity direction made]

Claimant

Representation:

For the claimant: Ms Faryl, instructed by IAS (Manchester)

For the respondent: Mr G Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the appeal of the Secretary of State against the determination of First-tier Tribunal Judge Foudy promulgated 3.12.14, allowing the claimant's appeal against the decision of the respondent, dated 19.9.14, to refuse his asylum, humanitarian protection and human rights claims. The Judge heard the appeal on 23.11.14.
2. Designated Tribunal Judge Zucker granted permission to appeal on 16.12.14.
3. Thus the matter came before me on 2.3.15 as an appeal in the Upper Tribunal.

Error of Law

4. For the reasons set out below, I find no error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Foudy should be set aside.
5. In granting permission to appeal, Judge Zucker considered it arguable that the judge erred in law in failing to have regard to the Country Guidance case of AT & Others (Article 15c: risk categories) Libya CG [2014] UKUT 00318 (IAC).
6. Whilst it may be deduced from §24 that the judge had some case law in mind, when she stated “the Tribunal has accepted that if a person has a well-founded fear of persecution by armed militias there is no effective state protection for him and no feasible internal relocation option,” there was no reference to AT & Others.
7. AT & Others held that (i) having regard to the generally hostile attitude of society to the former regime, the following are, in general, at real risk of persecution or Article 3 ill-treatment on return to Libya: - (a) former high ranking officials within the intelligence services of that regime; (b) others with an association at senior level with that regime; (ii) As a general matter, the closer an individual was to the centre of power within the former regime, the more likely that the individual will be able to establish a risk of persecution or Article 3 ill-treatment on return; (iii) the majority of the population of Libya either worked for, had some association with, or has a member of the family who worked for or had an association with the Qadhafi regime. Such employment or association alone is not sufficient to establish a risk of persecution or Article 3 ill-treatment on return; (iv) in general, family members of those described in (i) and (ii) above are not at risk of persecution or a breach of their protected rights on return. It is possible, however, that an individual will be able to establish such a risk but this will need to be demonstrated by specific evidence relating to the individual’s circumstances. Mere assertion of risk by association as a family member would not be sufficient without fact-specific evidence of the risk to that particular family member.
8. Judge Foudy made no reference to the above when stating at §19 that as it was credible that the claimant had cousins who fought for Gaddafi, as a great many Libyans did, his cousins’ political allegiances might well haunt the claimant on removal. However, the judge did make fact-specific findings in the same paragraph, to the effect that she accepted as credible that the claimant had been perceived as pro-Gaddafi in 2012/2013 and thus found that he was likely to be suspected of the same allegiance on removal.
9. Applying AT & Others to the findings of fact, this was not mere assertion of risk but fact-specific evidence that the claimant would be at risk on return, for cogent reasons open to the judge on the evidence. In the circumstances, any failure to refer to AT & Others was not material to the outcome of the appeal, as on the findings of fact, it was open to the judge to find that the claimant would be at risk on return.

10. The other grounds of appeal address the absence of reference to section 117B of the 2002 Act and the deficiency of the proportionality assessment. However, as the findings on human rights were in the alternative, no material error is disclosed.
11. I also note that the finding of the judge at §25 that it was not in the best interests of the two children to be returned to a situation of internal armed conflict in Libya, was not the subject of any ground of appeal by the Secretary of State and stands unchallenged.

Conclusion & Decision

12. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains allowed.



Signed:

Date: 2 March 2015

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case and thus there can be no fee award.

A handwritten signature in black ink, appearing to read 'Pickup', written in a cursive style.

Signed:

Date: 2 March 2015

Deputy Upper Tribunal Judge Pickup