



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

Appeal Number: AA/11056/2014

THE IMMIGRATION ACTS

Heard at North Shields

Decision & Reasons

On 14 March 2016

Promulgated

Prepared on 14 March 2016

On 19 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

**S. R.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Warren, Counsel, instructed by Switalski's Solicitors

For the Respondent: Mr Kingham, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Libya who claimed asylum on 3 August 2013, asserting that upon return to Libya by the Dutch authorities he had suffered persecution, and that he would face a real risk of further persecution should he be returned to Libya once more.
2. On 12 November 2014 the Respondent refused the asylum claim, and made a decision to remove him to Libya. The Respondent was not satisfied that the Appellant had told the truth about his experiences.

3. The Appellant's appeal against the removal decision was heard on 30 April 2015 and was dismissed in a decision promulgated on 22 May 2015 by First Tier Tribunal Judge Farrelly.
4. The Appellant was granted permission to appeal the decision on 28 September 2015 by Deputy Upper Tribunal Judge Chapman on the basis it was arguable the Judge had failed to engage properly with the expert medical evidence, and the relevant country guidance decision of AT (Libya) CG [2014] UKUT 318. Thus the matter comes before me.

Error of Law?

5. Ultimately both parties were agreed that the Judge had made a number of mistakes in his description of the expert medical evidence that was before him concerning injuries the Appellant claimed to have experienced in Libya since his return to that country from the Netherlands in 2013. Cumulatively I am satisfied that these demonstrate that the medical evidence which lay at the core of the Appellant's case was not given the degree of careful attention that it deserved, and that there was an inadequate analysis of the weight that should be attached to it. That medical evidence went to the issue of whether the Appellant had told the truth about his experiences in Libya after his return in 2013. It follows in my judgement that the adverse findings of fact made in relation to the Appellant's account of his experiences in Libya after his return in 2013 are unsafe and must be set aside.
6. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, as requested by the Appellant. In the circumstances of the appeal I am satisfied that this is the correct approach, and I note Mr Kingham does not seek to suggest otherwise. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012. Having reached that conclusion, with the agreement of the parties I make the following directions;
 - i) The decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal for rehearing. No findings of fact are preserved. The appeal is not to be listed before Judge Farrelly.
 - ii) An Arabic interpreter is required for the hearing of the appeal.
 - iii) The appeal is to be listed on the first available date at the North Shields hearing centre after 1 April 2016.

- iv) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Decision

- 7. The decision promulgated on 22 May 2015 did involve the making of an error of law sufficient to require it to be set aside and the appeal to be reheard. Accordingly the decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal with the following directions;
 - i) The decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal for rehearing. No findings of fact are preserved. The appeal is not to be listed before Judge Farrelly.
 - ii) An Arabic interpreter is required for the hearing of the appeal.
 - iii) The appeal is to be listed on the first available date at the North Shields hearing centre after 1 April 2016.
 - iv) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Deputy Judge of the Upper Tribunal JM Holmes
Dated 14 March 2016