



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00531/2017

THE IMMIGRATION ACTS

Heard at Field House
On 22 November 2017

Decision & Reasons Promulgated
On 7 December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

S.M.E.J.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Rai, Counsel, instructed by David Grand solicitors
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Walker, promulgated on 19 May 2017. I will continue with the anonymity direction which was made in the First-tier Tribunal in respect both of the appellant and each of her dependants since the outcome of this appeal will also be dispositive of their appeals.
2. I can deal with the matter relatively briefly in the light of agreement between Mr Rai who acts for the appellants and Mr Duffy who acts for the Secretary of State. It was accepted in the Rule 24 statement that this appeal should be allowed and the decision of the First-tier Tribunal set aside. In the intervening period, the Upper Tribunal

promulgated its decision in ZMM (Article 15(c)) Libya CG [2017] UKUT 00263 (IAC), which recast the country guidance in relation to Libya.

3. For present purposes I need only read from the head note and from a couple of key paragraphs within that determination. The head note reads 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.”

4. Paragraph 5 of the decision reads as follows:

“This appeal has been selected as country guidance because ZMM could fairly be described, with no disrespect intended, as ordinary and unremarkable. He is male, he is healthy, he speaks Arabic and he was originally from Tripoli. He does not have a family for whom he is responsible and as far as we are aware has no particular vulnerabilities. He has been in the United Kingdom since 2014.”

5. I need not trouble myself with the other material in ZMM but the key matters are dealt with under the sub-heading of ‘the risk’ at paragraph 92:

“All of this data must be assessed against the backdrop of the general country information. The situation is complex and fast moving but two features stand out. There is at present a manifest failure of State protection for the ordinary citizen and indiscriminate violence is liable to erupt anywhere at any time. In the context of this extreme volatility we are satisfied that the cumulative effect of the evidence is such that the Article 15(c) test is satisfied.”

and part of paragraph 93 reads as follows:

“We cannot however be satisfied that the peace in these oases is stable or durable or that the notional returnee to Libya would be able to safely access such locations.”

6. It is therefore evident that the decision of the First-tier Tribunal was predicated on country guidance which has subsequently been revised to a considerable extent. It follows that the decision of the First-tier Tribunal must be set aside.
7. In relation to the findings of fact which were made in the First-tier Tribunal these are clearly expressed and there is no reason to doubt the credibility of the appellant. It is agreed by both representatives that the Upper Tribunal is in a position to assess the level of risk based upon the facts as they were found by the First-tier Tribunal. Indeed, such assessment admits of only one answer.

8. Inevitably in the light of **ZMM**, as was fairly and promptly conceded by Mr Duffy, the risks in this instance are of such significance that Article 15(c) is plainly engaged. The appellant and her dependants (who are also the subject of the current appeal) have a proper claim to humanitarian protection. All these appeals are therefore granted on the ground of humanitarian protection.
9. In the circumstances, it is unnecessary for me to consider the alternative asylum ground which is raised on the papers or indeed any other human rights grounds. I expressly make no findings or determination on those matters.

Notice of Decision

- (1) The appeal (including the connected appeals of the appellant's dependents) is allowed and the decision of the First-tier Tribunal is set aside.
- (2) The decision is remade allowing each and all of the appeals on humanitarian protection grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Mark Hill

Date

7 December 2017

Deputy Upper Tribunal Judge Hill QC