



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03939/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Centre City Tower Decision & Reasons
Birmingham Promulgated
On 16th June 2017 On 28th June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**NA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharif of Fountain Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Gurung-Thapa of the First-tier Tribunal (the FtT) promulgated on 19th September 2016.
2. The Appellant is a female Libyan citizen whose asylum and human rights application was refused on 8th December 2015.
3. The appeal was heard by the FtT on 23rd August 2016. The FtT heard evidence from the Appellant and did not find her to be credible, and dismissed the appeal on all grounds.

4. The Appellant applied for permission to appeal to the Upper Tribunal relying upon five grounds which are summarised below.

Ground 1

5. The FtT failed to apply the correct standard of proof. At paragraph 47 the FtT made a finding that “it is more likely than not that it was a random attack by criminal elements in Libya”. The FtT erred by not applying the lower standard of proof applicable in claims for international protection.

Ground 2

6. At paragraphs 45 and 46 the FtT gave inadequate reasoning in not finding the police report provided by the Appellant as being reliable. At paragraph 47 the FtT gave inadequate reasons for not accepting that the Appellant was specifically targeted by a terrorist group/militia.

Ground 3

7. The FtT failed to adequately consider persecutory the risk that the Appellant would face on return to Libya as a failed asylum seeker.

Ground 4

8. The FtT failed to adequately consider paragraph 276ADE of the Immigration Rules, and in particular gave inadequate reasons for concluding that there would not be very significant obstacles to the Appellant’s reintegration into Libya.

Ground 5

9. The FtT erred in considering Article 8. The FtT materially erred at paragraph 53 by finding that Article 8 was not engaged. At paragraph 60 the FtT found that the Appellant has two brothers in the United Kingdom, and materially erred in finding that Article 8 was not engaged, and failed to take into account that the threshold of engagement is not a high one.
10. Permission to appeal was initially refused. The Appellant renewed the application direct to the Upper Tribunal, relying upon the five grounds summarised above, and adding that the FtT had erred at paragraph 43 in assessing plausibility, and had failed to take into account guidance given in HK v SSHD [2006] EWCA Civ 1037.
11. Permission to appeal was thereafter granted by Upper Tribunal Judge Plimmer in the following terms;

1. It is arguable that the First-tier Tribunal has applied the wrong standard of proof at [43] and [47], despite the correct self direction at [5]. The First-tier Tribunal has arguably erred in asking whether the converse to the Appellant’s case is more likely than not and failing to ask whether the Appellant’s claims are reasonably likely.
2. All grounds are arguable.

12. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. In summary the Respondent pointed out that the FtT had set out the correct burden and standard of proof at paragraph 5, and had given adequate reasons for finding the Appellant not to be credible. It was not accepted that the FtT had applied an incorrect standard of proof to the findings of fact made.
13. It was submitted that the FtT adequately considered paragraph 276ADE(1) (vi), and had not erred in considering Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention).
14. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FtT decision contained an error of law such that it should be set aside.

Submissions

15. Mr Sharif relied upon the grounds seeking permission to appeal, and the grant of permission. I was asked to note that the FtT had referred to a higher standard of proof at paragraphs 43 and 47. Therefore findings that had been made by the FtT were not sustainable, because an incorrect standard of proof had been applied.
16. Mr Mills relied upon the rule 24 response. With reference to ground 3, Mr Mills pointed out that the FtT had applied the correct country guidance decision, that being AT Libya CG. A new country guidance decision, FA Libya CG had been published on 20th September 2016, but the FtT decision had been promulgated on 19th September 2016. The FtT could not be blamed for following extant country guidance. It was open to the Appellant to make a fresh application. I was asked to find no material error of law and to dismiss the Appellant's appeal.
17. Mr Sharif did not have further submissions to make in response, being content to rely on the grounds upon which permission to appeal was granted, and to indicate his disagreement with the submissions made by Mr Mills.
18. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

19. I do not find that the FtT materially erred in law. I set out my reasons below, dealing with the Grounds of Appeal in the order in which they were made in the application for permission.

Ground 1

20. At paragraphs 43 and 47, the FtT uses unfortunate phraseology, which has led to this challenge based upon the standard of proof. However it is important to read the decision as a whole.

21. It is clear that the FtT set out the correct burden and standard of proof at paragraph 5. That is common ground. I am asked to find that the FtT departed from that standard. I do not find that any cogent reason has been given to persuade me that having set out the correct standard of proof, the FtT went on to apply an incorrect higher standard.
22. The correct standard of proof is not only set out at paragraph 5, but at paragraph 37, which is where the FtT begins to set out reasons for findings, there is reference to;

“I have applied the burden and standard of proof to which I have already referred.”
23. The burden and standard previously referred to, is contained within paragraph 5. At paragraph 54 the FtT records;

“After consideration of all the evidence in the round I find that the Appellant has failed to demonstrate, even to the lower standard of proof, that she has a well-founded fear of persecution for any of the reasons recognised by the Refugee Convention.”
24. At paragraph 43 the FtT makes a finding that “it is more likely than not that the group would have searched for the husband at his mother’s home irrespective of the fact that they did not know he was there and the fact that she was an elderly lady.”
25. At paragraph 47 the FtT finds “that it is more likely than not that it was a random attack by criminal elements in Libya.”
26. The above does not mean that the FtT concluded or believed that the Appellant had to prove her case on a higher standard than a reasonable degree of likelihood. Having carefully considered the decision as a whole, I am satisfied that the FtT applied the correct standard of proof in assessing whether the Appellant had proved her case to a reasonable degree of likelihood.

Ground 2

27. The Appellant complains of inadequacy of reasoning. I set out below the head note to Budhathoki (reasons for decision) [2014] UKUT 00341 (IAC);

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.
28. The Appellant refers in particular to paragraphs 45 and 46. I find that it is clear why the FtT did not accept the Appellant’s claim as credible. The FtT correctly referred to assessment of documents by following the Tanveer Ahmed principles. One must also read the preceding paragraphs, and in particular paragraphs 41-44 in which the FtT sets out reasons for not

accepting the Appellant's claim as credible. Findings contained within those paragraphs were open to the FtT to make on the evidence, and sustainable reasons given.

29. The Appellant also refers to paragraph 47, which must be read together with paragraph 48 in which adequate reasons are given. At paragraph 49 the FtT was entitled to draw an adverse inference from the delay in claiming asylum.

Ground 3

30. I have checked, and the country guidance in force at the date of the FtT hearing was AT Libya CG. As correctly pointed out by Mr Mills, FA Libya CG was not in fact published until 20th September 2016. The FtT was entitled to find that the Appellant did not fall within the risk categories set out in AT Libya CG.

Ground 4

31. I find this ground to be a disagreement with the assessment made by the FtT in relation to paragraph 276ADE, but no error of law is disclosed. The FtT found at paragraph 55 that there would be no very significant obstacles to the Appellant's reintegration in Libya. The FtT was entitled to note that the Appellant had only been in the UK since 27th July 2014. She and her family are Libyan citizens. The FtT did not find them to be at risk. It was also found that the Appellant had not given a credible account. The FtT noted at paragraph 51 that the Appellant has family members in Tripoli, and that one of the Appellant's brothers in the United Kingdom visited Tripoli in July 2016 to see his sister and her family. The FtT noted the evidence to the effect that the Appellant's sister works in Tripoli as a pharmacist and her husband as a doctor.

Ground 5

32. With reference to Article 8, I find that at paragraph 53 the FtT is making a finding in relation to Articles 3 and 8 so far as a medical claim is concerned. The FtT considers the best interest of the Appellant's five children at paragraphs 56-59. It is clear that the FtT regards consideration of the best interest of the children as a primary consideration, and the conclusion that their best interest (taking particular account of their age) are in remaining with their parents, is not an error of law. The FtT, in relation to the Appellant's adult brothers in the United Kingdom, notes that contact could be maintained either by visits or modern communication. The FtT correctly considers section 117B of the Nationality, Immigration and Asylum Act 2002. In order for there to be family life between the Appellant and her adult brothers, the Appellant would need to prove that there exists something more than the normal emotional ties. I have not been directed to evidence that was before the FtT to prove that. I find no error of law disclosed in this ground.
33. On a separate point, which was included in the renewed application for permission to appeal, the Appellant complains about the FtT conclusion at

paragraph 43 in which the FtT finds “I do not find it plausible that the terrorist group/militia would not have searched for the Appellant’s husband at his mother’s house which was in the same area as his house if they were searching for him by December 2014.”

34. I reiterate that the FtT decision must be read as a whole, and when that is done, it is apparent that the FtT has not made incorrect plausibility findings. The FtT has set out the correct standard and burden of proof and applied it. The FtT has looked at the evidence in the round, made findings open to it on the evidence, and supported those findings with adequate reasoning.
35. The Appellant disagrees with the FtT decision. However the grounds and submissions made on behalf of the Appellant, while supporting a clear disagreement with the FtT, do not disclose any material error of law made by the FtT in this decision.

Notice of Decision

The making of the decision of the FtT did not involve the making of a material error of law such that the decision must be set aside. I do not set aside the decision. The appeal is dismissed.

Anonymity

The FtT made an anonymity direction. I renew the anonymity order pursuant to 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 her or any member of her 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. This direction is made because the Appellant has made a claim for international protection.

Signed

Date 19th June 2017

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The appeal is dismissed. There is no fee award.

Signed

Date 19th June 2017

Deputy Upper Tribunal Judge M A Hall