



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

Appeal Number: PA/02574/2017

THE IMMIGRATION ACTS

**Heard at Manchester
On 15 February 2018**

**Decision & Reasons
Promulgated
On 06 April 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**IFII
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Davis instructed by Duncan Lewis & Co Solicitors.

For the Respondent: Mr Harrison Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal.
2. The scope of the hearing before the First-tier Tribunal related to both protection and human rights grounds. The appeal was heard on the 9 May 2017 and the decision promulgated on the 17 May 2017.
3. Since the hearing before the First-tier Tribunal there has been a decision of the Upper Tribunal on the issue of Article 15(c) and risk in

Libya: ZMM (Article 15(c)) Libya CG [2017] UKUT 263. Although decided after the promulgation of the decision under challenge the panel in ZMM considered the same material as the Judge in the first instance in this case, the Upper Tribunal hearing being dated 3 May 2017. The binding nature of such a decision was also considered by the Upper Tribunal in Adam (Rule 45: authoritative decisions) [2017] UKUT 370. In light of the findings in ZMM relating to country conditions and associated risk I find error of law in the decision of the First-tier Tribunal in relation to its findings concerning Article 15(c) Qualification Directive and set that aspect of the decision aside.

4. I am satisfied that the appeal should be allowed on the basis that substantial grounds have been shown for believing that the appellant, if returned to Libya at this time, would face a real risk of suffering serious harm and are unable, or, owing to such risk, unwilling to avail himself of the protection of that country; and that he is not excluded from a grant of humanitarian protection.
5. The appellant, however, asserts that on the findings made by the Judge he is entitled to a grant of asylum, not just humanitarian protection.
6. The findings by the Judge can, inter alia, be summarised in the following terms:
 - a. The appellant is thirty years old and came to the United Kingdom as a student in March 2006 where he remained until October 2010 when he returned to Libya. Two years later in September 2012 he returned as a visitor and has remained since [57].
 - b. The appellant does not fall within the range of categories identified in AT and others [2014] UKUT 318 whilst his father worked for the regime the Tribunal in the above country guidance case made it clear that the majority of the population work for the regime or had some association with it [58 - 60].
 - c. The Judge accepted the appellant's explanation for alleged discrepancies in a death certificate relating to his brother recording a death in Misrata [64 - 66].
 - d. The Judge noted the appellant had provided no documentary evidence such as an arrest warrant to support his claim his other brother had gone missing [67]. Documentation provided by the appellant to support his assertions was found not to warrant weight being attached to it by the Judge [68 - 69].
 - e. The Judge accepted one of the appellant's brothers was killed during the ongoing fighting in Libya but was not satisfied that his other brother had gone missing or that there is an arrest warrant for him outstanding [70].
7. The Judge notes that the appellant claimed to be a Libyan national and part of the Bemi Walid Tribe and that he and his family were Gaddafi supporters when he was alive. Ground 1 on which permission to appeal was sought asserts that the core of the appellant's case was

that he had been a member of a group defending Gaddafi and his regime against the revolutionaries and that although discrepancies have been identified in the reasons for refusal letter, the question was whether the appellant will be perceived as a supporter of Gaddafi. Ground 2 claimed that the Judge erred by failing to engage with the relevant evidence, post-dating AT and others which looked at the treatment of those who are or are perceived as supporters of the Gaddafi regime. Although the Judge made reference to the most recent Country Policy and Information Note produced by the respondent relating to the treatment of Gaddafi supporters (and perceived supporters) the Judge only made reference to paragraph 2.4.8 and failed to look at other sections, particularly section.6.2 looking at Gaddafi loyalists.

8. In AT and Others (Article 15c; risk categories) Libya [2014] UKUT 318 (IAC), no longer a Country Guidance case on the Article 15(c) risk but is still country guidance so far as the categories of those entitled to asylum are concerned, it was 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.
9. In Najj (2016) CSOH 142 it was held that there was no error in the Secretary of State's approach to the Claimant's fresh claim that he was at risk if returned to Libya on account of his alleged membership of the Wershfana tribe and his father's strong support of the late

Colonel Gaddafi. The Secretary of State could have come to no other rational view without disregarding the guidance in AT and Others (Article 15c; risk categories) Libya CG [2014] UKUT 318.

10. The Judge specifically finds that the evidence did not support an assertion that the appellant fell into any of the risk categories identified. It is accepted in the Country Guidance that there remains a generalised attitude of resentment towards perceived Gaddafi supporters and fighters and that given that they have been subject to serious ill-treatment, including assassination committed with impunity, it is likely that a person who was closely associated with the Gaddafi regime – particularly at a senior level, such as ministers, officials and diplomats – will be at risk of persecution or serious harm. Persons who had a low-level role in the regime and family members of persons associated with the regime, even at a senior level, are in general unlikely to be at risk of persecution.
11. It is accepted that this assessment is case specific with the onus on the person to demonstrate that they are at risk of persecution or serious harm. The Judge did not find the appellant had discharged the burden of proof upon him to establish that he faces a real risk of persecution as a result of his tribal or previous associations with the regime. This has not been shown to be a finding outside the range of findings reasonably available to the Judge on the evidence.
12. The section of the County Information Note relied upon by the appellant states:

6. Treatment of Gaddafi loyalists

6.1 Legal context and Political Isolation Law

6.1.1 The United States Institute of Peace explains in an August 2016 report: 'In May 2013, the passage of the Political Isolation Law provoked further confusion and disruption to policing (along with many other state institutions). Passed by the GNC under threat of violence from armed groups, it was in essence a lustration law aimed at preventing members of the former Gadhafi regime from holding public office during the country's transition. The law decreed the removal of individuals who had held senior positions under Gadhafi from state institutions but provided little guidance on what ranks qualified as a senior position and on how to remove individual from office. Significantly, it did not take into account the role played by numerous officials who had defected during the revolution, including senior police who brought their knowledge and security training to bear in ousting the regime. Some of these officials had briefly been able to use their revolutionary standing to extend legitimacy to local police departments but the Political Isolation Law undermined this, field interviews reveal, painting with the same brush everyone who had occupied a government post under Gadhafi. In a country where the government had been the largest employer for decades, fingerpointing and even trigger-pulling became commonplace.'¹⁶

6.1.2 The International Commission of Jurists (ICJ) published a study on the challenges facing

Libyan judges, in July 2016. This stated that: 'Actions undertaken thus far aimed at holding judges and other public officials accountable for collaboration with the corruption and human rights violations committed during the rule of Colonel Gaddafi, have been inadequate and not in conformity with international standards. The legislation providing for vetting of Gaddafi era public officials, known as the 'Political Isolation Law', failed to provide for clear criteria for those being vetted, or for a case-by-case analysis of each individual affected, and failed to ensure that due process standards would be applied to vetting proceedings. 'As a result, many individuals were unfairly removed from their positions and statutorily excluded from holding public office for ten years from the date of their exclusion. The extension of the 'Political Isolation Law' to the judiciary in 2013 was met with protests and challenges in Court and the GNC reportedly repealed the law in early 2014. However, given the complicated political and legislative situation in Libya, its status in law is currently unclear, with a challenge in the Constitutional Court pending.

Thousands of Libyans perceived to be against the regime were detained without charge, and were often subjected to torture and mistreatment in detention. 'After the fall of the Gaddafi regime, the Ministry of Interior (under the control of the NTC) issued Decree 388 (2011) which granted local Supreme Security Committees the right to arrest, detain and interrogate suspects. This decree provided a legal basis for the arrest and detention of suspects by committees created by civilian or military councils and militias at the local level. The 2012 report of the UN Commission of Inquiry on Libya concluded militias executed and tortured to death perceived Gaddafi loyalists, and were liable for charges of the war crime of murder or arbitrary deprivation of life. As of the date of publication, there were no known prosecutions related to killings by militias.'¹⁸ 6.2.2 The DFAT Report also stated: 'DFAT assesses that those who were, or are perceived to have been, highranking officials in the Gaddafi regime (such as ministers, senior bureaucrats, military personnel or diplomats), or who had close associations with the Gaddafi family, or those who were associated with the Libyan security forces during the 2011 conflict, face a high risk of both societal and official discrimination throughout Libya. This may include being illegally detained, beaten or tortured; having death threats made against themselves or their families; or being killed. However, DFAT assesses that it is unlikely that a Libyan who was employed by the government at a low level unrelated to the security establishment would face discrimination as a result'.¹⁹ 6.2.3 A joint UNSMIL/UNOHCHR document ('Torture and deaths in detention in Libya') reporting on torture and deaths in custody, published in October 2013 stated: 'Those arrested are taken from their homes, workplaces, streets or checkpoints. Detainees are frequently moved from one makeshift place of detention (some may even be officially recognized as being under a specific ministry) to another before being transferred for longer periods to proper prisons. They include individuals suspected of having fought on the side of or otherwise having supported Qadhafi's regime, and their family members. Some have been detained apparently on the basis of belonging to certain tribal or ethnic groups, including Warfalla, Tawergha, and Mashashia, as these groups are collectively perceived by some as having supported the former regime. Given the arbitrary nature of the arrests

and lack of judicial oversight, cases of personal score-settling are not uncommon.'

'Claims for international protection of persons having been directly affected by developments since 2011 may need to be given particular attention, including, inter alia, members of tribes/families or individuals perceived to be in support of one of the conflict parties or the former Gaddafi regime.'²¹ 6.2.5 The February 2015 Special report of the Secretary-General on the strategic assessment of the United Nations presence in Libya noted that: 'Benghazi has been plagued by a wave of assassinations of former regime officials and members of the judiciary, as well as armed and security forces and activists.'²² 6.2.6 The Human Rights Council Investigation (A/HRC/31/CRP.3) dated 15 February 2016, noted: 'Revolutionary armed groups have a significant distrust of any security apparatus or personnel who were active in the Qadhafi regime, and have been quick to act, including through the use of force, when they have felt excluded from the decision-making process or otherwise disgruntled. 'In addition to the difficulties internally displaced persons generally encounter in enjoying their rights, groups perceived as having supported the Qadhafi regime during 2011 are at particular ongoing risk. OHCHR has received particular complaints of violations and abuses from members of the Tawergha community whose experience of mass displacement goes back to August 2011. '...Most major groupings of armed actors have carried out unlawful killings, in particular executions of individuals taken captive or detained, and the assassination of those voicing dissent. 'The assassination of perceived opponents to those exercising power have been frequent, particularly in Benghazi. In most cases the assassinations were attributed by interviewees to Ansar al-Sharia. Those targeted included political figures, human rights defenders, journalists, judicial actors, religious leaders, and alleged Gaddafi supporters...'²³ 6.2.7 The Human Rights Watch report (Libya: Stop revenge crimes against displaced persons) referred to a UN Security Council resolution 2095: 'On March 14, 2013, the UN Security Council passed resolution 209524, which expressed grave concern about "reprisals, arbitrary detentions without access to due process, wrongful imprisonment, mistreatment, torture and extrajudicial executions" in Libya and called on the government to "accelerate the judicial process, transfer detainees to state authority and prevent and investigate violations and abuses of human rights." The resolution underscored the government's primary responsibility for the protection of Libya's population.'²⁵ In its annual report covering events in 2016, Human Rights Watch provided the following update: "In what amounts to a crime against humanity, militias and authorities in Misrata continued to prevent 40,000 residents of Tawergha, Tomina, and Karareem from returning to their homes in relation for alleged crimes during the 2011 revolution attributed to people from those cities against antiGaddafi activists and fighters..²⁶ 6.2.8 The U.S. Department of State explains in its annual report for 2015 that: 'There were numerous reports government forces, rebel groups, and some tribes committed arbitrary and unlawful killings of civilians. Primary targets of killings included political opponents; members of police, internal security apparatus, and military intelligence; and also judges, political activists, members of civil society, journalists, religious leaders, and Qadhafi-affiliated officials and soldiers.'²⁷ 6.2.9 Human Rights Watch's annual report covering events in 2015 noted that 'On

July 28 [2015], Tripoli's Court of Assize convicted 32 former Gaddafi officials on charges of alleged crimes committed during the 2011 uprising. The court sentenced Saif al-Islam Gaddafi in absentia and eight other defendants to death, including former intelligence chief Abdullah Sanussi, and former Gaddafi-era prime ministers, al-Baghdadi al-Mahmoudi and Abuzaid Dorda. Serious due process violations, including denial of access to legal counsel for defendants, undermined the trial.²⁸ 6.2.10 Freedom House reports that 'In August [2015], several dozen Qadhafi supporters staged a rally in Benghazi, which was broken up when opponents fired guns at the crowd.'²⁹ 6.2.11 Human Rights Watch recorded that: 'In June [2016], unidentified armed groups killed 12 detainees upon their conditional release from al-Baraka prison in Tripoli. All 12 were members of the former Gaddafi government and had been accused of taking part in the violence against anti-government protesters in 2011. According to the families, the bodies were found in various locations around Tripoli. At time of writing, no investigation had been conducted into these crimes.'

13. The country material does not show that all returnees who are failed asylum seekers or of the appellant's tribal group or from his home area face a real risk of serious harm on return sufficient to entitle them to a grant of refugee status. The Judge was aware of the nature of the appellant's case and the evidence provided but did not find, as a matter of established fact, that the appellant would face a real risk. Considering the evidence made available to the Judge, submissions, and determination as a whole, it has not been made out that the rejection of the asylum claim is outside the range of findings reasonably open to the Judge.
14. The reality, in light of ZMM, is that the appellant will not be returned to Libya.
15. I do not find it made out that the Judge erred in relation to the asylum claim. Findings in relation to the aspects are preserved. The Upper Tribunal remakes the decision by allowing the appeal pursuant to Article 15(c) of the Qualification Directive only.

Notice of Decision

16. The appeal is allowed on Humanitarian Protection grounds only.

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

Anonymity.

17. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed:

Date 4 April 2018

Upper Tribunal Judge Hanson