



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

Appeal Number: PA/02758/2017

THE IMMIGRATION ACTS

**Heard at North Shields
On 16 January 2018**

**Decision & Reasons
Promulgated
On 18 January 2018**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**AA (LIBYA)
[ANONYMITY ORDER MADE]**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Verity Adams of Counsel, instructed by Bradford Law Centre

For the respondent: Mr Myroslav Diwnycz, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the appellant, whether directly or indirectly. This order applies to,

amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission against the decision of the First-tier Tribunal refusing him leave to remain on asylum, humanitarian protection or human rights grounds. The appellant is a citizen of Libya.

Background

2. The appellant in this appeal is a Libyan man, with a British citizen wife and two minor children, all of whom are dependants in this appeal. The First-tier Tribunal Judge accepted that he is the son of a former Major in the Libyan army under President Qaddafi (sometimes also written as Gaddafi). The appellant's father was a decorated officer who was highly regarded as a loyal and faithful servant by the Qaddafi regime. Following the overthrow of President Qaddafi, the appellant's father's health declined and he eventually died.
3. The appellant is a member of the Warfalla tribe. He was able to live, discreetly, in Libya for two years after the overthrow of President Qaddafi but he is personally associated with Mr Ramadan Ali Bashir, the Secretary-General of Libya under the Qaddafi regime, because he housed him after the overthrow, and his house was searched by the Libyan authorities, whom the judge found were probably looking for Mr Bashir.

First-tier Tribunal decision

4. Having found the above facts to be proved to the appropriate lower standard, the First-tier Tribunal Judge concluded that the appellant was an economic migrant who had fabricated the core of his claim and dismissed the appeal. The appellant appealed to the Upper Tribunal.

Permission to appeal

5. Permission to appeal was granted on the basis that there was in the decision no adequate consideration of the section 55 best interests of the appellant's children, the provisions of sub-paragraph 276ADE(1)(vi) of the Immigration Rules HC 395 (as amended), the country of origin information to which he was referred at the hearing, or broader Article 8 ECHR issues concerning children in Libya and in particular, chronic malnutrition as it affects the children.
6. The granting judge considered it to be 'at least arguable that the judge was confused in his approach to Article 8 which arguably amounts to a material error of law'. No issues in the grounds of appeal were excluded.

Rule 24 Reply

7. There was no Rule 24 Reply.
8. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

9. At the hearing, I received oral submissions from Ms Adams and Mr Diwnycz. It is not necessary to set out those submissions in full, save where referred to below.
10. The appellant relied in part on a document issued by the Jamestown Foundation on 2 June 2011, before the fall of Qaddafi, entitled *Libya's Warfalla Tribe Switching Loyalties?* which indicated that:

“Incorporating over one million of Libya's six million people, the loyalty of the Warfalla to the Qaddafi regime is considered to be one of the most important factors in the survival or demise of the existing power structure. ...

The Warfalla, together with the Qadhafa and the Magarha, have traditionally been considered the pillars of the Qaddafi regime, dominating the security services and the leadership of the military ... the Warfalla remain prominent in the regime's revolutionary committees, a paramilitary force entrusted with securing loyalty to the Qaddafis, by force if necessary.”
11. The respondent has issued two country information reports about Libya in the last year. The first, in March 2017, entitled *Libya: Actual or perceived supporters of former President Gaddafi*, at 6.2.1 incorporates guidance given in the Australian DFAT report on Libya, that revenge attacks by state and non-State actors continued against Qaddafi supporters and, crucially, at 6.2.3, against their family members. The DFAT source for that latter assertion is a joint UNSMIL/UNOCHR document published in October 2013, entitled *Torture and deaths in detention in Libya*. At 6.3, the report records the ill-treatment of Qaddafi's sons.
12. In the respondent's January 2018 Country Information and Guidance Report on Libya entitled *Libya: Security and humanitarian situation*, issued on 12 January 2018, just four days before the hearing of the present appeal, at section 8 the respondent noted that indiscriminate violence continues in Libya now. At 8.1.2, the respondent quoted the UK Foreign Office website updated in November 2017, which says this:

“The political situation in Libya remains fragile and the security situation remains dangerous and unpredictable. Fighting can break out anywhere without warning, including between local militia groups, and many civilians have been killed in outbreaks of conflict in residential areas. ‘There’s a high risk of civilians, including journalists, humanitarian and medical workers, being caught in indiscriminate gunfire or shelling, including air strikes, in all areas where there is fighting. ‘There has been heavy conflict during 2016 and 2017 in several areas, including parts of Tripoli, Benghazi, Zawiyah, Sabratha, Derna, and in central Libya at Barak al Shati, Sebha, As-Sidra and Jufra. These conflicts include pro-Government of National Accord (GNA) forces, troops under the control of General Heftar, local militias and also extremist groups such as Ansar Al Sharia and affiliates of

Daesh and Al Qaeda in the Islamic Maghreb (AQ-M). Derna (1300km east of Tripoli) is under a state of siege by the Libyan National Army with all routes in and out closed, and civilians have been killed in air attacks on the city. 'Reports of violence, reprisal killings, looting and human rights abuses continue across the country.'

13. On the basis of that evidence, Mr Diwnycz did not seek to argue that there was no longer an Article 15C risk in Libya as recognised in *ZMM*.

Discussion

14. The first point which arises from the judge's findings of fact and credibility is that his statement that the core of the appellant's account is fabricated is inconsistent with his primary finding that it was credible and that he accepted the core account. Those two statements are irreconcilable. The other grounds of appeal are also made out. There is no alternative but to set the decision aside and remake it on the basis of the situation in Libya today and the risk that poses to the appellant.

15. In remaking the decision and assessing the circumstances today, I am guided by the decision of the Upper Tribunal in *ZMM* (Article 15(c)) Libya CG [2017] UKUT 263 (IAC), promulgated on 28 June 2017, and the judicial headnote to that decision, 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."

16. I consider first whether this appellant is entitled to refugee protection. He is the family member of a highly decorated Major in the Qaddafi army and has himself sheltered the former Secretary-General of Libya, Ramadan Ali Bashir. The authorities know that and searched his house for that reason, as the First-tier Tribunal found. He is a member of a tribe (the Warfalla) who were very closely associated with the Qaddafi regime.
17. Any or all of those facts would be sufficient to put this appellant at risk of persecution on return to Libya. The appellant and his family are entitled to refugee status.
18. As I have found that the appellant and his family are entitled to refugee protection, humanitarian protection is not available to them. However, but for the avoidance of doubt I make it clear that if they were not refugees, on the basis of the evidence and authorities before me, they would have been entitled to humanitarian protection under Article 15C.
19. The facts which have led to my finding that the appellant is entitled to refugee status are also sufficient to meet the Article 3 ECHR risk standard. As regards human rights and in particular the position of the appellant's children, the First-tier Tribunal decision is inadequately reasoned. It is not

necessary to make any detailed findings under section 55 or the Article 8 provisions of the Immigration Rules, or outside those Rules, because I have allowed the appeal on refugee protection grounds.

DECISION

20. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the appeal on asylum and human rights grounds.

Date: 16 January 2018

Gleeson

Tribunal Judge Gleeson

Signed **Judith AJC**

Upper