



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03550/2017

THE IMMIGRATION ACTS

Heard at North Shields
On 30th January 2018

Decision & Reasons Promulgated
On 21st March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MR K.E.A
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs. Cleghorn, Counsel, instructed by Halliday Reeves Law Firm.

For the respondent: Ms. Petersen, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant is a national of Libya. He came to the United Kingdom as a dependent upon his wife's student visa. He subsequently claimed protection which was refused.

2. He is a pharmacy graduate from Benghazi. He claimed his father was fighting extremists and disappeared in 2015 with the family concluding he had been kidnapped or worse. The same year his uncle was killed and the following year his brother was kidnapped. Consequently, he feared return because he may be at risk.
3. His appeal was dismissed by Judge Manchester of the First tier Tribunal. The judge did not find him credible. Reference is made to aspects of the claim; the fact he returned to Libya at one stage; and the delay in claiming. Consequently, at paragraph 54 the judge found no credence could be attached to his account of events relating to him or his family; the reasons he claimed for being at risk or any perceived association with the former regime.
4. The judge went on to consider the 15 (c) risk and referred to the country guidance case of AT and others (Article 15(c); risk categories) (CG) [2014] UKUT 318. The judge accepted the appellant could not return to Benghazi because of conditions there but found he could relocate to other areas such as Al Bayada where the rest of his family continue to live. The judge referred to the appellant and his wife being educated; that they had formerly been employed and that they could obtain employment again.

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5. Permission to appeal to the Upper Tribunal was sought on the basis the judge erred in dealing with relocation. The refusal letter had not identified a potential area and arguably this was procedurally unfair because the appellant did not know what area to address. Only in submissions was it suggested that he could relocate to Tripoli or Al Bayada. At paragraph 60 the judge commented there had been no reference to the security situation in Al Bayda deteriorating to the level where 15(c) applied. It was argued the appellant's representatives could not have anticipated having to address this.
6. It was also argued that the judge erred from the evidence in concluding the appellant was unlikely to end up as an internally displaced person. Finally, it was contended the best interests of his child had not been considered.
7. The rule 24 response was to the effect that the judge had made adequate findings on the appellant's credibility and had considered the country background material provided. The conclusions on internal relocation at paragraph 53, 60 and 61 were sustainable.

8. For the hearing I have received a bundle on behalf of the appellant consisting of 10 items. Notably, the decision of ZMM (article 15(c)) Libya CG [2017] UKUT 263 is included. First Tier Judge Manchester did not have the benefit of this guidance as it was not promulgated until 28 June 2017. That decision concluded that the level of violence throughout Libya was at such a high level that a returning civilian would face a real risk solely on account of their presence.
9. It is clear from the decision that First Tier Judge Manchester gave the anxious scrutiny required of the claim and has crafted a comprehensive judgement. Clear reasons for the negative credibility findings were given. The refusal letter acknowledged that the security situation in Libya had deteriorated, particularly around Benghazi. However, the situation in other parts of Libya had not deteriorated to the extent where article 15(c) applied. Consequently, the issue of relocation was live and it would not have been beyond imagination for Ms Adams, Counsel, to anticipate this. Al Bayada was where his remaining family were. Matters have however changed with the new country guidance decision.
10. Both parties agree that this decision alters the position. Looking at matters in light of this decision the parties are in agreement that the current position is that there exists a 15(c) risk throughout. Judge Manchester's conclusion therefore can no longer be sustained.
11. Both parties are in agreement that I remake the decision allowing the appeal on the basis of article 15(c) only. Mrs Cleghorn confirms that she is not challenging the negative credibility findings made by the judge and so the decision dismissing those aspects of the claim stand.

Decision.

The decision of First tier Judge Manchester errs in law and cannot be sustained. This is in light of the subsequent country guidance on the general risk throughout Libya for civilians. The decision is remade allowing the appeal in relation to article 15(c) only. The rejection of the claim for asylum on credibility grounds shall stand.

Francis J Farrelly
Deputy Upper Tribunal Judge

19th March 2018