



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

Appeal Number: AA/11509/2014

THE IMMIGRATION ACTS

**Heard at: Columbus House, Decision & Reasons Promulgated
Newport
On: 10 August 2015**

On: 11 September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

NSNA

(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr M Chaudhry, Duncan Lewis & Co

For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is subject to an anonymity order by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).

2. This is an appeal against the determination of First-tier Tribunal Judge Britton in which he dismissed the appeal of NSNA, a citizen of Libya, against the Secretary of State's decision to refuse asylum.
3. The application under appeal was made on 7 August 2014 and was refused by reference to paragraphs 336 and 339M of the Immigration Rules (HC395) on 28 November 2014. The Appellant exercised his right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Britton on 9 April 2015 and was dismissed on asylum, humanitarian protection (Article 15(c) of the Qualification Directive) and human rights (Articles 3 and 8 ECHR) grounds. The Appellant applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Reid on 22 June 2015 in the following terms

“The grounds argue *inter alia*: the judge failed to give any or adequate consideration to whether the Appellant was at risk of indiscriminate violence (Article 15c); the judge failed to consider a material matter, namely the evidence of Dr Rebwar Fatah; conditions in Libya were now such that AT and Others [2014] UKUT 318 (IAC) could be departed from and Dr Fatah's report supported that argument.

The judge at [42-43] referred to both parties' submissions, the Appellant's skeleton argument and to AT and Others (albeit with erroneous citation). Dr Fatah's report is referred to in the skeleton argument however I could find no reference at all to Dr Fatah's report in the judge's decision. It is arguable that the decision lacks analysis and reasoning in respect of the expert report, Article 15c and the Appellant's assertion that it was appropriate to depart from AT and Others.”
4. At the hearing before me Mr Richards represented the Secretary of State. A rule 24 response had been filed opposing the Appellant's appeal. Mr Chaudhry represented the Appellant.

Background

5. The history of this appeal is detailed above. The facts, not challenged, are that the Appellant is a citizen of Libya of the Warshafan tribe born on 23 June 1988. The Appellant left Libya on 31 July 2014 travelling via Tunisia to the United Kingdom where he claimed asylum on arrival. He had been living in the United Kingdom as a student between from 2003 and had leave to remain in this capacity until 6 October 2014. Having returned to Libya on 3 June 2014 he claimed that his plans to set up a poultry business were interrupted by an extortion attempt and believing that he was being targeted and that the country was not safe he came back to the United Kingdom to claim international protection. The Appellant claimed that the degree of indiscriminate violence in Libya was at such a high level that he would face a real risk of suffering serious harm solely on account of his presence in Libya.
6. The First-tier Tribunal found that the Appellant had not established that he faced persecution on a return to Libya. In particular the Tribunal did not

accept the Appellant's account of the claimed extortion (see paragraph 39). The Tribunal found further that the Appellant did not fall within any of the risk categories identified in AT and Others and therefore that he would not be at risk on return. Finally the Tribunal found that the Appellant did not face an interference in his family life or a disproportionate interference in his private life on a return to Libya. The finding in respect of family in private life is not challenged.

Submissions

7. On behalf of the Appellant Mr Chaudhry said that the Appellant was a genuine student in the United Kingdom who intended to return to Libya to set up a poultry farming business. He was threatened by a militia who were trying to extract money and he refused to give them anything. The militia attacked his farm. There were gunshots. The basis of his claim was a specific risk to members of the Warshafan tribe. They are associated with the former Gaddafi regime. As such the Appellant comes within AT and Others - Article 15(c); risk categories (Libya) CG [2014] UKUT 00318 (AIT). The Judge did not however accept that the Appellant was at risk of indiscriminate violence. The Judge heard the appeal on 9 April 2015 and dismissed the asylum appeal finding that the Appellant was not credible. He also made a finding on the indiscriminate violence point. The grounds are comprehensive; the judge did not adequately consider the issue of indiscriminate violence. There was a substantial amount of high quality objective evidence yet the judge just referred to AT and Others and said that this was binding upon him. However the general security situation had deteriorated since AT and Others and there was objective evidence to this effect. It was not considered. Mr Chaudhry referred to page 36 of the Amnesty report referring to internal armed conflict in Libya and the disregard for civilian life. He also referred to the report from Human Rights Watch. So far as the report from Dr Fatah is concerned the Judge makes no reference to it yet this report is corroborative of the deteriorating situation.
8. For the Respondent Mr Richards said that he could not seriously argue that the Judge carried out a close examination of the evidence in his decision however he does say in his decision that he has considered all of the evidence but found that he was bound by AT and Others. AT and Others was promulgated in July 2014 and as the Judge noted it is a voluminous and comprehensive judgement running to some 141 pages. Matters individual to the Appellant and risk categories are not relevant in judging the risk of indiscriminate violence. These are persecution points. It is not an error of law to be bound by a recent country guidance decision as weighty as this one. So far as the second ground is concerned the Judge had the advantage of hearing and seeing the evidence put before him and he found that the Appellant's account was a fabrication.

Error of law

9. The grounds of appeal to the Upper Tribunal are succinct and Mr Chaudhry did not seek to expand upon them in his oral submissions. It is asserted firstly that the Judge failed to give adequate consideration to whether the Appellant was at risk of indiscriminate violence pursuant to Article 15(c) and secondly that he failed to properly consider the evidence of the expert Dr Rebwar Fatah. The second assertion is said to have a potential effect both on the Judge's credibility finding in respect of the Refugee Convention claim and his overall assessment of Article 15(c). In his submissions Mr Richards accepted that he could not argue that the Judge carried out a close examination of the evidence in his decision but said that the Judge nevertheless considered all the evidence before him before reaching a sustainable decision.
10. In considering the grounds it is firstly clear that Article 15(c) was a live issue, if not the prime issue, being argued on the Appellant's behalf. This is clear both from the grounds of appeal to the First-tier Tribunal and the skeleton argument submitted at the First-tier Tribunal hearing. It is also clear from the skeleton argument that in arguing these grounds the Appellant placed significant weight on the report from Dr Rebwar Fatah both in respect of the asylum and Article 15(c) claims. The skeleton argument also seeks to address reasons for departing from AT and Others and asserts that the Appellant falls into a heightened risk category thereby engaging the Elgafagi v Straatssecretaris van Justitie [2009] C-465-07 sliding scale.
11. On behalf of the Appellant Mr Chaudhry submitted that the First-tier Tribunal decision makes no mention of the report from Dr Rebwar Fatah whilst Mr Richards pointed out that the Judge does nevertheless say that he has considered all of the evidence. Both advocates are correct. It is perhaps surprising given the specific reference to the report in the skeleton argument that it is not specifically mentioned in the decision. There is however no reason in my judgment to doubt that in considering all of the evidence in the round that the Judge has had due regard to this evidence.
12. So far as credibility is concerned, and contrary to the assertion in the grounds of appeal to the Upper Tribunal, there is in my judgement nothing in Dr Fatah's report that could have had a material effect on the Judge's credibility assessment. Dr Fatah was asked to comment upon the plausibility of the Appellant's claim to have been targeted by militias because he was running a farm. At paragraphs 73-88 of the report this is discussed and the conclusion reached that the objective and other evidence points to instances in western Libya and elsewhere of militias perpetrating abuses against individual's properties including their homes, farms and businesses. This is neutral as to the Appellant's personal credibility merely confirming that such abuses do take place. At paragraphs 39 to 41 of his decision the First-tier Tribunal Judge gives detailed reasons for finding that the Appellant's account of the attack on his farm was not credible. These findings are not challenged in the grounds of appeal. The fact there have been instances where property has

been targeted could not in my judgement have caused the Judge to reach a different conclusion as to the credibility of the Appellant's account.

13. Turning to the issue of Article 15(c) the starting point must be the country guidance case of AT and Others. This is referred to extensively in the Respondent's refusal letter of 28 November 2014 and, as noted above, the skeleton argument submitted to the First-tier Tribunal seeks to distinguish the Appellant's appeal and to address reasons for departing from AT and Others. However it does so not by suggesting that there has been any change in the country situation since AT and Others but rather by submitting that the Appellant falls into a heightened risk category identified by AT and Others. Despite the skeleton arguing a departure from the country guidance case it is in effect asserting that the appeal should be allowed in accordance with the heightened risk categories identified in that country guidance case. Whereas the first ground of appeal to the Upper Tribunal is based very clearly on an alleged deterioration in the country situation since AT and Others this is not the basis upon which the appeal was argued before the First-tier Tribunal.
14. So far as the assertion made in the grounds of appeal is concerned reference is made to Dr Rebwar Fatah's report and also to the "*substantial quantity of high-quality, reliable objective evidence demonstrating a significant deterioration in conditions in Libya*" submitted to the First-tier Tribunal. The grounds add (at paragraph 9) "*if permission to appeal is granted, the Appellant will produce a schedule of relevant excerpts of this material, which appears between 36 and 162 of the Appellant's bundle*". Despite this assurance the bundle submitted to the Upper Tribunal does not contain such a schedule. Dr Fatah's report (dated 26 March 2015) refers to events happening in 2014 (i.e. after the hearing of AT and Others) and also to events happening prior to 2014 but does not mention AT and Others or seek to distinguish the general country situation pertaining in March 2015 from that pertaining in November 2013. This is perhaps not surprising because this was not one of the questions that Dr Fatah was asked to address (see paragraph 40 of the report). The grounds of appeal to the Upper Tribunal put forward an argument that was not advanced to the First-tier Tribunal or addressed in the expert report but nevertheless suggest that the Judge fell into error for not dealing with that argument. In my judgement there is no error of law in this respect. The Judge refers to AT and Others, he confirms that he has considered all the material put before him and in my judgement there is no reason to doubt that he has done so and reached a conclusion that was properly open to him.
15. Finally there is the question of 'risk categories' and the second part of the second ground of appeal to the Upper Tribunal. The issue here is whether, if the Judge had properly considered the expert report, he would have reached the conclusion that the Appellant being from the Warshafan tribe would be seen as a former regime member or associate and therefore be subject to persecution or serious harm. In my judgement this can be dealt with briefly. Firstly this is not an Elgafagi sliding scale issue

because it is not an Article 15(c) issue. There is no suggestion in AT and Others or elsewhere that former regime members or associates are more likely to be subject to indiscriminate violence rather the issue is that such persons are more likely to be subjected to targeted violence. Secondly and in any event the Judge's findings are clear. The Appellant's account of being targeted is not accepted as credible. His mother father and siblings, members of the Warshafan tribe, have remained in or returned to Libya (see paragraph 41 of the decision). The report does not suggest that being a member of the Warshafan tribe is of itself a reason to fear persecution. There is in my judgement no error of law.

16. My conclusion from all of the above is that the decision of the First-tier Tribunal contains no error of law material to the decision to dismiss the appeal by reference to the Refugee Convention, the Human Rights Convention or Article 15(c) of the Qualification Directive. The appeal is dismissed.

Summary

17. The decision of the First-tier Tribunal did not involve the making of a material error of law. This appeal is dismissed.

Signed:

Date:

**J F W Phillips
Deputy Judge of the Upper Tribunal**