



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

Appeal Number: AA/12134/2015

**THE IMMIGRATION ACTS**

**Heard at Liverpool  
On 24<sup>th</sup> April 2017**

**Decision & Reasons Promulgated  
On 5 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**KHALED OMAR ZENTANI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Greer of Broudie Jackson Canter  
For the Respondent: Mr C Bates, HOPO

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of Judge Taylor made following a hearing at Stoke on 31<sup>st</sup> October 2016.

**Background**

2. The appellant is a citizen of Libya, born on 17<sup>th</sup> January 1978. He arrived in the UK in October 2001 and says that he made an asylum claim on the basis that he would have problems on return to Libya because of a land dispute. The respondent has no record of that claim. Be that as it may he claimed asylum on 14<sup>th</sup> August 2013 after having been encountered during an enforcement raid.
3. The appellant says that he comes from the Zentani Tribe based in a town a few miles southwest of Tripoli. He says that his father and two brothers participated in criminal activities in the name of the Gaddafi regime and as a consequence he would be at risk on return.
4. The judge did not accept any aspect of the appellant's story. He said that, even taking the appellant's case at its highest, his father and brothers were not high ranking officials or associated at a senior level with the regime and as a family member of his father and brothers, without more, he would not be at risk. Whilst satisfied that there was an internal armed conflict within Libya he was not satisfied that it was uniform across all of Libya in places such as Tripoli and Zintan where the appellant had a tribal connection through his father. Those areas are much less prone to indiscriminate violence. In any event the powerful Zintan militia supports the internationally recognised authorities and it would not be unreasonable or unduly harsh for the appellant to seek their protection if necessary.
5. On that basis he dismissed the appeal.

### **The Grounds of Application**

6. The appellant sought permission to appeal on the grounds that the judge had failed to give adequate reasons for reaching his adverse credibility findings. The appellant's claim to asylum was sur place, following the overthrow of Colonel Gaddafi. It was therefore irrational for the judge, for example, to hold it against him that he failed to claim asylum en route to the UK in 2001 some ten years before the Gaddafi regime was overthrown.
7. Second the judge had misapplied the country guidance case of AT and Others (Article 15(c) risk categories) CG [2014] UKUT 318 in concluding that the appellant would not be at risk because of his father and brothers' activities, and had erred in stating that he could avail himself of the protection of the Zintan militia. In AT and Others the Tribunal said that they had considerable misgivings in holding that an individual could look to the protection of a militia by declaring their support for it.
8. Permission to appeal was granted by Judge Keane on 21<sup>st</sup> December 2016. Judge Keane highlighted the reliance on Section 8 of the 2004 Act by the original judge, and suggested that excessive weight to the appellant's conduct by reference to Section 8 might have been given in the determination.

9. On 18<sup>th</sup> January 2017 the respondent served a reply defending the determination.

### **Submissions**

10. Mr Greer relied on his grounds. He argued that the judge had in effect taken Section 8 as the end point as well as the beginning point in his assessment of credibility and had set the bar impossibly high. He had also misconstrued the appellant's case, which was on the basis that his relatives had committed criminal acts on behalf of the Gaddafi regime and therefore had a different risk profile to those who were high ranking officials.
11. Mr Bates defended the determination and submitted that the judge had in fact considered all of the evidence in the round, made findings properly open to him and had reached the sustainable conclusion that the appellant could safely return to his home area in Libya.

### **Findings and Conclusions**

12. I am satisfied that the judge did not materially err in law.
13. It is quite right to say that the judge's reference to the route which the appellant took to the UK is irrelevant if he arrived here in 2001 when the reason for his claiming asylum did not arise until 2011. However the respondent has no record of an asylum claim in 2001 and it cannot simply be assumed that he did in fact leave Libya then.
14. There is no doubt that the appellant's conduct is properly relevant to Section 8. Even if he could not be criticised for failing to apply for asylum between 2001 and 2011, the fact is that he did not do so until 14<sup>th</sup> August 2013, after he had been encountered by Home Office officials during an enforcement raid. It is also apparent that he has been working in the UK using at least three different aliases.
15. The judge was quite right to say that these must be matters which are designed or likely to mislead and should be taken into account as damaging the appellant's credibility. There is no misapplication of the law. The weight which the judge attached to these matters was a matter for him. He noted that the appellant's various accounts in his screening interview, asylum interview and witness statement and oral evidence were all broadly consistent, but that is not determinative in his favour. He was entitled to conclude that the appellant's conduct outweighed the fact that he had given a consistent account.
16. So far as Ground 2 is concerned, if the judge's credibility findings are sustainable, it falls away. The appellant's account of having relatives who have committed crimes has been found not to be credible.
17. In AT the Tribunal states

- “144. The UNSMIL Report dated October 2013 states that those who had been arrested include the family members of those who were suspected of having fought on the side of or of having supported the Gaddafi regime.
145. It appears to us that there is limited support for a proposition that family members of those associated with the former regime or those suspected of being such are now as a matter of course at risk on return. The background evidence to that effect is limited and the expert evidence was not entirely consistent. We had one example only cited to us. If there was such a risk to family members we consider that there would be more evidence of it in the extensive background materials to which we were referred.”
18. AT and Others is not authority for the proposition that family members of persons associated with the Gaddafi regime or who committed crimes in their name are at risk. Indeed it stated that there was limited support for it. The judge was entitled to say that the appellant was merely asserting a risk but had not provided any specific evidence of it.
19. Finally, it was not an error for the judge to find that the appellant could seek the protection of the Zintan militia if necessary. Again, in AT at paragraph 81 the Tribunal said
- “There may be cases where an individual could look to the protection of a militia where there is reason to believe that that person would be protected, for example because of a family or tribal link to a particular militia. We have considerable misgivings however in adopting or endorsing an approach that embraces Dr Porter’s evidence of a person being able to achieve protection by turning to the militia leadership and declaring their support for that militia, in the absence of any evidence in a given case that such a declaration is feasible and would achieve the object of securing protection.”
20. The judge did not say that the appellant’s access to the protection of the Zintan militia was based upon a declaration of support for it, but because of his family links to it, which is entirely consistent with the country guidance case of AT and Others.
21. The original judge did not err in law. His decision stands. The appellant’s appeal is dismissed.

No anonymity direction is made.

Deborah Taylor

Signed

Date 1 May 2017

Deputy Upper Tribunal Judge Taylor