



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

Appeal Number: PA/06821/2016

THE IMMIGRATION ACTS

**Heard at North Shields
On 22nd November 2017**

**Decision & Reasons
Promulgated
On 30th November 2017**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**WM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Brakaj, instructed on behalf of the Appellant

For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Libya.

**Direction Regarding Anonymity - Rule 13 of the Tribunal Procedure
(First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify

him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellant with permission, appeal against the decision of the First-tier Tribunal (Judge Fox), who, in a determination promulgated on the 30th May 2017, dismissed WM's claim for protection and found that he was not entitled to a grant of humanitarian protection.
3. The appellant's immigration history and basis of claim is set out within the determination at paragraphs 2-7 and the decision letter of the 20th June 2016. The appellant is a national of Libya and studied at university in his home area. He applied for a student Visa in 2008 which was issued and further leave to remain was granted until March 2010. He left the United Kingdom in September 2010 and on 9 December 2014 applied for a visit Visa. That was issued and he travelled to the UK in April 2015 for a week. He applied for a further Visa in July 2015 and travelled to the UK in September 2015 for one month.
4. During the summer of 2015 he converted from Sunni to Shia Islam having been introduced by a friend named A. He was aware that there would be a danger when he converted, he did not think anyone would find out. When he converted he went to see a Sheik. On 5 November 2015 A's cousin called the appellant and asked if he knew why A had been arrested by the police. The appellant believed it was because it had become known that he was a Shia Muslim. The appellant believed that when A got to the police station he would be ill-treated and would tell the police about the appellant's conversion. He therefore picked up his passport, money, his birth certificate and bag and left the area. He went to a place that was 600 km from his home area. He went to stay with a friend called M. At first M refused to help him because of their differences of religion but then he agreed to help him. However that night the authorities came to look for him and threatened his family to hand him over. He was also told that the police and militias were looking for him. The appellant claimed his family were forced to leave home and he does not know what is happening to them the appellant stayed with M. The last time he was told that the police were looking for him was a week before he left Libya. In the range and agent to take the appellant out of Libya because he found his name had been distributed to all the checkpoints. In February 2016, when in the UK M sent the appellant the document concerning his arrest in Libya.
5. The appellant travelled to the UK from Libya on 27 November 2015. He arrived in the United Kingdom on 4 January 2016 claimed asylum.
6. His protection claim was refused in a detailed reasons for refusal letter dated 20th June 2016. In that decision letter, the Secretary of State considered his protection claim in the light of the evidence relating to conversion from Sunni to Shia Islam and whether he would be wanted for apostasy in Libya. The Secretary of State set out the objective material in the decision letter. The Secretary of State accepted that the appellant was

a national of Libya and did not accept his conversion or that he was wanted by the Libyan authorities. Even taking the claimant's highest, if accepted that the Libyan authorities were seeking to ill treat him due to his religion it was considered whether he would fall into one of the risk categories on return to Libya. The decision is also considered Article 15 C but for the reasons set out at paragraphs 23 onwards, the Secretary of State concluded that he was not entitled to a grant of humanitarian protection. Article 8 was also considered at paragraphs 38 onwards.

7. The appellant exercised his right to appeal that decision and the appeal came before the First-tier Tribunal on the 23rd May 2017. The judge rejected his factual claim to be at risk of harm although he accepted that the appellant had converted from being a Sunni Muslim to a Shia Muslim (I refer to the findings of fact made at paragraphs 17 - 34). The judge found that the religious problems between the Sunnis and the Shias "went beyond the borders of Libya" but there was no law prohibiting Shia Muslims from practising within Libya or any legislation banning such a conversion. He concluded that he was not satisfied that there was sufficient evidence to persuade him that there were any particular problems in Libya and that whilst there were sporadic outbreaks of violence Libya had more problems in terms of civil unrest than religious intolerance (paragraph 24).
8. At paragraph 25 he considered the issue of humanitarian protection. He made reference to the Country Guidance decision of AT and Others (Article 15c; risk categories) Libya CG [2014] UKUT 00318 earlier in the decision at paragraph 14. It does not appear that any reference was made to the current country guidance case law of FA (Libya: Art 15 c) CG [2016] UKUT 413 which was reported on 30 September 2016 which made it clear that the numerous changes in Libya since November 2013 were sufficient to render unreliable the previous guidance set out in AT and others (as cited). The judge dismissed his appeal on all grounds.
9. The Appellant sought permission to appeal that decision on the basis that the First-tier Tribunal Judge erred in law in his consideration of the background material relating to the problems between the different branches of Islam and that the determination was beset with typing errors, some of which had no effect on the determination that others made the decision more difficult to understand. In particular at paragraph 33 the judge had provided no evidence to support the broad assertion made as to passing through security. It was also asserted that the judge failed to properly consider the background material concerning religious intolerance and that the findings affected the credibility assessment.
10. On 15 September 2017, First-tier Tribunal Judge Gillespie granted permission to appeal.
11. At the hearing before me, Mr Diwncyz informed me that there was agreement between the parties as to the correct outcome of the appeal namely, that that the appellant was entitled to a grant of humanitarian

protection in the light of the decision ZMM (Article 15 (c) Libya CG [2017] UKUT 00263 (IAC) (promulgated shortly after the promulgation of the First-tier Tribunal's decision on the 30th May 2017). The head note to that decision reads as follows :

"The violence in Libya has reached such high-level that substantial grounds are shown to believe 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."

12. Mr Diwncyz did not seek to uphold the decision of the First-tier Tribunal and therefore it should be set aside and remade by this Tribunal by substituting a decision to allow the appeal on the basis of Article 15 (c) and allowing the appeal on that ground. Ms Brakaj confirmed that in the circumstances the appellant did not seek to pursue the asylum claim and that he withdrew his claim in that respect.
13. I note that to the extent that the judge applied AT and others, it is arguable that this was an error, given that the country guidance had been replaced by the decision in FA (Libya: Article 15 C (Libya) CG [2016] UKUT 00413 (IAC). Furthermore, although he could not have considered ZMM, the issue of the judges risk assessment under Article 15 c is now arguably flawed in the light of the conclusions reached in that decision.
14. In the light of the decision of the most recent country guidance as referred to in the preceding paragraphs, the Appellant's appeal will be remade. The parties agree that the correct outcome is that the appeal should be allowed on the basis of Article 15 (c).

Decision:

The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside and remade by consent as follows; I remake the decision in respect of Article 15 (c) by allowing the appeal on that ground and on Article 8 grounds.

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

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SM Reeds

Signed

Date 22 /11/2017

Upper Tribunal Judge Reeds

