



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

Appeal Number: PA/11271/2016

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 20 June 2017  
Prepared on 20 June 2017**

**Decision & Reasons Promulgated  
On 21 June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HOLMES**

**Between**

**A. E.  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

Representation:

For the Appellant: Ms Cleghorn, Counsel for Halliday Reeves Law Firm

For the Respondent: Ms Petterson, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Libya who entered the UK legally on 25 November 2015 as a student, accompanied by his wife and three children. He made an application for protection on 14 June 2016 on the basis the situation within Libya had deteriorated to the point that he did not consider that it was safe for his family to return.
2. The Respondent refused that protection application on 29 September 2016, and the Appellant's appeal to the First tier Tribunal ["FtT"] against

that decision was heard on 2 March 2017. It was dismissed on all grounds, in a decision promulgated on 27 March 2017 by First Tier Tribunal Judge G Robson.

3. The Appellant was granted permission to appeal that decision on 20 April 2017 by First tier Tribunal Judge Landes on the basis that it was arguable the Judge had failed to properly assess the risks faced by the family in the course of any return to Libya, and in particular to the home of relatives who lived in Tripoli. Thus there was no adequate analysis of the ability to enter Libya by air, or, by road, and then to travel from the point of entry to the home of family members. It was also considered arguable that the Judge failed to consider the position of the children, whether by reference to section 55, or, more broadly within his assessment of the proportionality of the decision under appeal.
4. The Respondent filed a Rule 24 Notice dated 4 May 2017 in relation to the grant of permission. Neither party has made formal application to adduce further evidence. Thus the matter comes before me.

#### Error of Law?

5. It is accepted by Ms Cleghorn that this appeal turns upon the Judge's approach to the Article 8 claim and to the humanitarian protection claim. The asylum claim is not made out; the claim relating to events at the appellant's place of work was geographically limited to the oilfields in the south of Libya where he formerly worked, and had no bearing on his ability to live in safety in Tripoli. As she accepts, upon reflection, the rejection of the asylum claim must stand.
6. The main focus of the Appellant's case derived however from the breakdown in security within Libya and the general lawlessness that had followed from the continuing conflict in that country. His case was that he and his family (including his three young children) could not in fact be returned by air from the UK to Tripoli, and that even if they physically could travel by air to Tripoli they would be unable to travel from the airport to his sibling's home in safety. If they could not return to Tripoli by air then it followed they faced a lengthy journey overland to Tripoli which he argued they could not undertake in safety as a result of the conflict and the associated lawlessness.
7. Ms Petterson, who like Ms Cleghorn also appeared below, accepted that the Judge had failed to adequately engage with the Appellant's case. There was no adequate analysis of the content of the background evidence relied upon, and a mere recital of the existence of some of it, did not suffice for that. Thus she accepted that there was no adequate analysis of whether the situation in Libya passed the relevant threshold, and if it did, either how the Appellant and his young family were going to travel through Libya to the home of relatives, or, having done so live there in safety.
8. Both were agreed that the decision discloses no engagement with section 55, or the position of the children beyond the bald statement that the best interests of the children were served by being with their parents.

9. In the circumstances the decision discloses material errors of law that renders unsafe the dismissal of the appeal on humanitarian protection and human rights grounds, and the decision in that respect must in the circumstances be set aside and remade. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, or whether to proceed to remake it in the Upper Tribunal.
10. There are in my judgement two factors to consider. Firstly no interpreter has been booked for the hearing today, and the Appellant is not present, so an adjournment would be required in any event in order for there to be a fair hearing of the appeal. Second, both parties accept that this is an appeal that should be the subject of remittal because of the need for evidence upon the ability of the family to travel internally within Libya, and, to live in safety with relatives in Tripoli, to be considered and assessed. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012.
11. Having reached that conclusion, with the agreement of the parties I make the following directions;
- i) The decision upon the asylum appeal is confirmed.
  - ii) The decision upon the humanitarian protection and human rights appeals is set aside, and the appeal is remitted to the First Tier Tribunal for rehearing. The appeal is not to be listed before Judge G Robson.
  - iii) An Arabic interpreter is required for the hearing of the appeal.
  - iv) There is presently anticipated to be the Appellant and no other witness, and the time estimate is as a result, 3 hours.
  - v) It is not anticipated by the Respondent that she has any further evidence to be filed. The Appellant anticipates that a review of the evidence is required and that a short further witness statement may be filed. The Appellant is therefore to file and serve any further evidence to be relied upon at his appeal by 5pm 11 July 2017
  - vi) The appeal may be listed at short notice as a filler on the first available date at the North Shields hearing centre after 18 July 2017.
  - vii) No further Directions hearing is presently anticipated to be necessary. Should either party anticipate this position will change, they must inform the Tribunal immediately, providing full details of what (if any) further evidence they seek to rely upon.

- viii) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

**Decision**

- 12. The decision promulgated on 27 March 2017 did involve the making of an error of law sufficient to require the decision upon the humanitarian protection and human rights appeals to be set aside and reheard. Accordingly, and to that limited extent, the appeal is remitted to the First Tier Tribunal with the directions set out above.

Deputy Judge of the Upper Tribunal JM Holmes

Dated 20 June 2017