Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11604/2016**

THE IMMIGRATION ACTS

Heard at Manchester, Piccadilly **Decision & Reasons Promulgated**
On 8th December 2017 **On 15 th December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between

MR T E
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Karnick (Counsel) instructed by Broudi Jackson & Canter
For the Respondent: Mrs Aboni (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Alis promulgated on the 4th April 2017, following a hearing on the 3rd March 2017 in Manchester.

2. The Appellant is a citizen of Libya, who claims to have converted from Islam to Christianity, and who claims that he would be persecuted upon return as a convert to Christianity. First-tier Tribunal Judge Alis rejected that account and did not accept that the Appellant had genuinely converted from Islam to Christianity and did not accept that he would follow that religion in Libya were he to be returned. Judge Alis went on to consider the question as to whether or not the Appellant would be at risk upon return as a civilian for the purposes of Article 15(c) of the Qualification Directive, and as to whether or not there was such a state of indiscriminate violence, as to mean that simply as a result of his presence there as a civilian, he would be at risk of serious harm upon return. Judge Alis noted that the previous Country Guidance case of AT and others (Libya) CG [2014] UKUT 318 had been held no longer to be good law and found that following the case of FA (Libya: Article 15(c)) Libya CG [2016] UKUT 00413, each case had to be decided on its own facts, and he went through the evidence before him regarding the risks to a civilian upon return and the question as to the level of violence but found the Appellant was not entitled to humanitarian protection under Paragraph 339C of the Immigration Rules. He further found that the Appellant's Human Rights either under Article 3 or Article 8 would not be breached by his removal.

3. The Appellant now seeks to appeal against that decision for the reasons set out both within the original and renewed Grounds of Appeal. Those documents are a matter of record and are therefore not repeated in their entirety here, but I have fully taken account of both documents in reaching my decision. However, in summary, it is argued by the Appellant in the first ground that the First-tier Tribunal Judge erred in his treatment of the assessment of the Appellant's credibility. It is argued that the Appellant had been found credible in his own appeal and had appeared as a witness in an appeal in which conversion to Christianity was an essential aspect and in which another Appellant had been found credible and that his own witness

and that witness had given evidence in the Appellant's own appeal and that neither that witness nor the Deacon were challenged about the Appellant's attendance at church. It is argued that the Appellant's attendance at church was not doubted and that the Judge was wrong to say that Deacon David Smith would only tell the Judge about his behaviour since he returned to Liverpool, whereas in fact the Minister who baptised the Appellant had also told Deacon Smith that the Appellant had regularly attended at the Manchester Methodist Central Hall. It is argued that the Judge discounted the evidence of the Appellant's witness on the basis the determination was not binding upon him, but that was argued to be not a reason for refusing to accept the evidence of a witness whose account had been genuine and it is argued that the principle in Devaseelan applied to both of the decisions and the Judge was wrong not to apply them.

4. In the second ground of appeal it is argued that the Judge misapplied the case of Ali Dorodian (01/TH/1537), and that the Judge implied that only a Minister could give evidence of a person's faith and that evidence from someone who is not a Minister should be given less weight and it is argued that Ali Dorodian was decided before the case of HJ (Iran), where it is said that it was determined that faith rather than church membership was a material consideration.

5. In the third ground of appeal it is argued that the Judge failed to adequately consider the risk upon return for the purpose of Article 15(c) and the evidence before the Judge had shown that the conditions had deteriorated since the presidency council had been introduced and that there were no internal flights to Tripoli and nothing had been put forward to show that the Appellant would be able to travel to Tripoli safely.

6. In the fourth ground of appeal it was argued the Judge erred in his approach to Article 8 and the Appellant had made a legitimate fresh claim in June 2013 which the Respondent had delayed consideration of until October 2016.

7. In the renewed Grounds of Appeal it is further argued that it was not put to the Appellant in cross-examination that the frequency of church attendance was inadequate or insufficient to show it was genuine by his conversion and the Judge failed to take account of the fact that the Appellant had been attending church for 5 years. It was argued that the fact that a person is a retired Deacon is not a reason to give less weight to that evidence.

8. Although permission to appeal in this case was initially refused by First-tier Tribunal Judge Kimnell on the 27th April 2017, permission to appeal was then granted by Upper Tribunal Judge Perkins on the 14th June 2017 who found it was arguable that a Tribunal gave unlawfully low weight to the evidence of Mr Smith and his explained hearsay evidence about the Appellant's attendance at church before his baptism and it was arguable that the Judge should have given more weight to the fact that the Appellant had previously been believed by a Tribunal and was not contradicting the earlier evidence that he gave. He found that the decision may ultimately withstand criticism but he decided to give permission to appeal on each ground.

9. In addition I heard oral submission from both Mr Karnick and Mrs Aboni and which I have fully taken account of in reaching my decision, and which are fully recorded within my record of proceedings.

My Findings on Error of Law and Materiality

10. Although it was argued in oral submissions by Mr Karnick of Counsel that in respect of the Article 15(c) consideration, the Judge failed to properly assess all the evidence before him in finding that the Appellant was not at a risk of serious harm simply as a result of being a civilian upon return, for the purposes of Article 15(c), his submission that the Judge should have found that there was an Article 15(c) risk, and that such risk has now been found by the Upper Tribunal in the case of ZMM (Article 15(c)) Libya CG [2017] UKUT 263, the case of ZMM made clear that the Tribunal should not just consider a body count for the purpose of an Article 15(c) risk, but had to consider the background evidence and the degeneration in the security situation in the

state, the risk of kidnapping and violent crime without impunity. Mr Karnick referred me to the Appellant's original bundle of documents with the numerous highlights in yellow and documents relied upon in respect of what was said to be the Article 15(c) risk.

11. However, the fact that the Upper Tribunal in the case of ZMM, in June 2017, after the date of Judge Alis's decision on the 4th April 2017, found that there was an Article 15(c) risk in Libya, does not mean, per se, that Judge Alis was wrong in his findings on the basis of the evidence before him. The decision in ZMM postdates the decision of Judge Alis, and therefore it is not a case where he has failed to follow an existing Country Guidance case, and as stated above, the Upper Tribunal in the case of FA, made it clear that the previous Country Guidance was no longer to be followed, and each Judge had to consider the risk on the basis of the evidence before them. Although Mr Karnick sought to argue that largely similar evidence was submitted before Judge Alis, as opposed to that before the Upper Tribunal in ZMM, clearly the Upper Tribunal in ZMM had the benefit of expert evidence which was not available to Judge Alis, and in the absence of the evidence being identical, I do not accept that it can be simply said that as a result of ZMM having reached a different conclusion, that Judge Alis erred in law on the evidence before him.

12. In his consideration of the evidence for Article 15(c) Judge Alis considered the risk of serious harm due to the ongoing situation in Libya between paragraphs 54 and 71 of his Judgment. He has fully recognised at [62] that Courts and Tribunals should not limit themselves to a purely quantitative analysis of figures of death and injuries, and at [63] quoted at length from the 2017 Country Information Report from the Home Office. Although Mr Karnick sought to criticise that on the basis of it being submissions by the Home Office, it was put forward as background evidence, and Judge Alis has not simply relied upon the findings regarding the Article 15(c) within that report, but has quoted at [63] numerous paragraphs regarding the security state situation within Libya. Judge Alis found that although the country was in a state of flux, and the humanitarian situation in Libya was poor, it had not

reached such a level in Tripoli as would breach Article 15(c) despite the fact there were a number of rival armed groups originating from the capital and nearby cities and areas. He further considered the question of vulnerable groups who were more likely to face problems than non-vulnerable groups and found that the Appellant had not fallen into any of those vulnerable groups at [67] and also took account of the fact there were no direct flights to Tripoli, but found that there were numerous flights via other countries to Tripoli and the Respondent had an expired passport and found there would be no reason why a fresh passport could not be obtained or a travel document obtained at [70].

13. Judge Alis further specifically set out the evidence that he had taken account of and I therefore do accept that he has taken account of all of the evidence submitted, when making his findings. It is not necessary for the Judge to quote from every single piece of evidence or document submitted, in order to substantiate his reasons as this would make Judgments unduly long and complex. What is necessary is the fact that the Judge must provide sufficient reasons to enable the losing party to know why they have lost, and it is necessary for the Judge to provide clear, adequate and sufficient reasons for his findings. I find that the Judge has given clear, adequate and sufficient reasons for his finding that the Appellant was not an Article 15(c) risk on the basis of the evidence before him, and that was a finding open to the Judge on that evidence. The fact that thereafter the Upper Tribunal in the case of ZMM (Article 15(c)) on some different evidence reached a different conclusion and that ZMM is now the new Country Guidance case, does not mean that Judge Alis erred in his analysis of the evidence before him.

14. Nor do I accept that Judge Alis erred in his approach to the Appellant's "conversion" to Christianity, or the evidence of the Dorodian witness. Although Mr Karnick seemingly argued that the case of Dorodian should no longer be followed given the case of HJ (Iran), the case of HJ (Iran) was dealing with the risk of homosexuals in Iran, rather than those who claimed to have converted to Christianity, with the evidence necessary to support such a claim of being at risk through conversion. HJ (Iran) had not overruled

Dorodian nor did Mr Karnick seek to rely upon any case where it had sought to be argued that Dorodian had in fact been overturned. Further, Judge Alis did not seek to say that it was mandatory for a witness to attend and give evidence, and stated specifically at [46] that the Dorodian principles did not make it mandatory for a witness to attend and give evidence but that the attendance of a witness enabled the Tribunal to question him or her about the Appellant's conversion and commitment to the religion. That was a correct statement of the law.

15. Further, although Mr Karnick sought to argue that Judge Alis seemed to imply that less weight should be given to a retired Deacon's evidence than that of an active Deacon, that was not the finding made by Judge Alis. At [47] the Judge found that Deacon Smith did not appear to hold any position at the West Derby Methodist Church as he retired in September 2015 and the fact that according to their rules a retired Minister must not attend the former church for a period of 12 months and thereafter Deacon Smith only started attending the church after September 2016 and that although the Appellant's evidence was that he came to live in Liverpool in July 2013, he did not attend the church in Liverpool until November 2016, approximately 1 month after his current application was refused. The point being made by Judge Alis at [47] was the fact that therefore Deacon Smith would not have been able to personally vouch for the Appellant's attendance at church or his commitment to Christianity given that Deacon Smith only started attending the church in September 2016, after the period of his retirement and the Appellant himself did not attend the church in Liverpool until November 2016. The Judge was entitled to take account of that in respect of the weight to be attached to Deacon Smith's evidence. Further, the Judge was entitled to find that the Deacon's evidence was largely based on what he had been told and assumptions.

16. Mr Karnick asserted that Deacon Smith had spoken to the Minister who actually baptised the Appellant and that in that regard it was clearly hearsay, and evidence from that Minister directly had not been produced and that Minister had not been asked to give evidence. I find that Judge Alis's findings

that the Appellant was now attending church more regularly as well as attending bible study classes, but he would have been aware that his application had been refused by that date and that his attendance appeared to have increased since that date with him now attending regularly, was a finding open to him. Further the finding that there was little or no evidence of his activities in the church between May 2013 and November 2016 and the evidence from his witness was limited in nature because he rarely attended church with the Appellant. These were findings open to the Judge on the evidence before him and I do not accept that he erred in respect of the way that he assessed that evidence or the Dorodian witness.

17. Further, although it is asserted that the previous decision in the Appellant's own case and the findings in the case of NS, were subject to the Devaseelan principles, Judge Alis quite properly stated that the findings in NS's case were not binding upon him, as although the Appellant had given evidence in that case, the Judge in that case had specifically noted that he was not making findings regarding the Appellant's own credibility in respect of his own conversion. Further, that decision did not relate to the Appellant.

18. As far as the previous decision relating to the Appellant was concerned, that was on an entirely different basis that the Appellant's application was refused, on account of the country situation existing at that time. The previous decision in respect of the Appellant's own case was not on the basis of any claimed conversion to Christianity. There was no material error in the way in which the Judge dealt with these previous determinations.

19. I find that the Judge was perfectly entitled on the evidence before him to find that the Appellant had not shown that he was in fact a genuine Christian convert or that he would follow that religion upon return to his home country of Libya. Although it is suggested by Mr Karnick that the Judge failed to take account of the Appellant's regular ongoing church attendance since 2015, as stated above, Judge Alis was not satisfied on the evidence before him that it had been established what his actual church attendance was during that

period, and again, I find that that was a finding open to him on the evidence before him.

20. In respect of the submission made by Mr Karnick that the Judge had not considered the Appellant's risk and taken account of his absence from Libya since 2011, his tribal affiliations and the number of checkpoints and large number of militia, which he argued elevated the Appellant's specific risk profile, although Mr Karnick was able to refer me to 1 reference to armed groups from the rival Warshafanah and Zawiyah having broken out on the 23rd March 2016 resulting in at least 14 fatalities and that following several days of clashing, mediation by tribal elders and other armed groups put an end to the fighting. That was not evidence that simply membership of the Appellant's tribe actually put him at risk per se or was a heightened risk factor. Nor was there clear evidence that his simple absence from Libya since 2011 would put the Appellant at risk. On the evidence before the Judge, the Judge properly dealt with and considered whether the Appellant did fall within the categories of vulnerable groups from the country evidence at [67].

21. Although Mr Karnick sought to argue that it had not been established as to how the Appellant could reach a safe area within Tripoli, Judge Alis clearly found that there were direct flights to Tripoli from other countries at [70] where he found that the Appellant would not be at risk.

22. In respect of the submissions regarding there being a substantial delay which had to be taken into account for the purposes of the Article 8 claim, although Mr Karnick referred me to a letter from the Appellant's solicitors regarding a fresh claim on the 3rd June 2013, in respect of which it was said a decision was made on the 18th August 2015, that decision to refuse being then subject to judicial review proceedings but following those judicial review proceedings the decision was withdrawn on the 18th August 2015, leading to the decision under appeal before Judge Alis. The fact that during that period there were judicial proceedings in terms of the judicial review proceedings, does account for a significant period of the time between the initial further submissions on the 3rd June 2013 and the decision under appeal. It was not a case where the

delays were simply caused by the Home Office, as there was a judicial review during that period.

23. However, as far as the Article 8 claim is concerned, Judge Alis properly and fully considered the Article 8 claim between paragraphs 75 and 79 of the Judgment and took account of all of the factors in that regard and found that the Appellant's Human Rights under Article 8 would not be breached by his removal.

24. In such circumstances none of the Grounds of Appeal or arguments submitted reveal that the decision of First-tier Tribunal Judge Alis contains any material error of law. The grounds in effect amount to no more than a disagreement with the findings, both in respect of the Christian conversion and in respect of the Article 15(c) claim. Although the Article 15(c) claim would now be decided differently in light of the Country Guidance decision in the case of ZMM, such that clearly it is for the Appellant if he so desires, to seek to claim again on the basis of Article 15(c), the decision of Judge Alis has to be considered on the evidence before him and there was no material error in his decision on that based upon that evidence at that time.

Notice of Decision

The decision of First-tier Tribunal Judge Alis does not contain any material errors of law and is maintained;

The Appellant was granted anonymity by the First-tier Tribunal and it is appropriate given the circumstances of this case in the asylum claim for the Appellant to be granted anonymity. I therefore do order that the Appellant is entitled to anonymity. No record or transcript of these proceedings may identify the Appellant or any member of his family either directly or indirectly. This direction applies to both the Appellant and to the Respondent. Failure to comply with this direction can lead to contempt of court proceedings;

Signed

Deputy Upper Tribunal Judge McGinty Dated 8th December 2017