



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: AA/00382/2016**

Appeal

**AA/00383/2016
AA/00384/2016
AA/00386/2016
AA/00387/2016
AA/00388/2016**

**I
THE IMMIGRATION ACTS**

**Heard at North Shields
On 31 July 2017**

**Decision Promulgated
On 08 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**ALI ABDUJABBAR
Master HUSSAN ALI ABDALRAHIM ALI ABDULJABBAR
Master MUSA ALI ABDALRAHIM ALI ABDULJABBAR
Mrs MASTURA GHWEEL ANDULRAHIM AMER
Master AHMED ALI ABDULRAHIM ALI ABDULJABBAR
Master ABDULRAHIM ALI ABDULJABBAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Lieu, Immigration Advice Centre Ltd.

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and

AA/00383/2016

AA/00384/2016

AA/00386/2016

AA/00387/2016

AA/00388/2016

evidence I do not consider it necessary to make an anonymity direction.

2. These are appeals by all six Appellants against the decision of First-tier Tribunal Judge Bradshaw promulgated on 12/01/2017, which dismissed the Appellants' appeals on all grounds.

Background

3. The First Appellant was born on 05/04/1969. The second appellant was born on 28/12/2000. The third appellant was born on 06/01/2003. The fourth appellant was born on 05/12/1974. The fifth appellant was born on 15/02/2004. The sixth appellant was born on 13/04/2014. The fourth appellant is the first appellant's wife. The remaining four appellants are their children. All six appellants are Libyan nationals.
4. The first appellant entered the UK on 10/03/2012 as a student. On 18/07/2012 the second, third, fourth and fifth appellants entered the UK in possession of visit visas. The family claimed asylum on 05/10/2012. The sixth appellant was born in the UK.
5. On 22/02/2016 the Secretary of State excluded the appellants from protection under article 1F (a) of the 1951 convention.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge R Bradshaw ("the Judge") dismissed the appeal against the Respondent's decision.
7. Grounds of appeal were lodged and on 19 April 2017 Judge Adio gave permission to appeal stating inter alia

The Judge made very clear findings of fact and made detailed analysis of the appellant's evidence which he found contradictory. The Judge noted at paragraph 46 that the appellant had stated at his asylum interview that after receiving all information from all sources a person will be called for questioning by the security special section and in answer to whether the appellant had a knowledge of any abuses perpetrated by the secret police the appellant answered that normally at any secret police these things happen but he did not witness any abuse. The Judge also accepted that the appellant did not commit any acts of actual abuse nor that he witnessed any brought by his own conduct he knew what happened once the information he gathered was passed on namely that people were

AA/00383/2016

AA/00384/2016

AA/00386/2016

AA/00387/2016

AA/00388/2016

brought in for questioning. I find that nowhere in the Judge's decision is there an analysis or weight attached to the report of the expert Prof Christoph Bluth. The Judge refers to it at paragraph 24 of the decision. There is no analysis concerning the evidence in the reasoning given by the Judge. Failure to state what weight is attached to that evidence and to resolve any inconsistencies between that evidence and the evidence of the appellant amounts to an arguable error of law.

The Hearing

8. Mr Diwnycz, for the respondent, told me that the second, third, fourth, fifth and sixth appellants made their own applications for asylum after the Judge's decision was promulgated. He gave an undertaking that their applications will be successful and that each of the second, third, fourth, fifth and sixth appellants will be granted asylum. On that basis, he asked me to treat their appeals as abandoned. Ms Lieu for the appellants told me that she did not oppose that motion.

9. I therefore find that the second, third, fourth, fifth, and sixth appellants have abandoned their appeals. They now await a grant of asylum as a result of separate applications. The first appellant's appeal remains before me.

10. Ms Lieu moved the grounds of appeal. She told me, succinctly, that the Judge's decision contains a material error of law because the Judge does not deal with the expert report from Prof Bluth. She reminded me that the Judge refers to the report as part of the evidence for the appellant at [24] of the decision, but thereafter the report does not feature at all in the decision. She told me that not only is there no reference to the expert report, but there is no analysis of the report nor is there an explanation of what, if any, weight is attributed to the conclusions of the expert. She told me that as the expert report has not been considered the decision is both unsafe and unsound. She urged me to allow the appeal and to remit this case to the First-tier for reconsideration of new.

11. Mr Diwnycz, for the respondent adopted the terms of the rule 24 response dated 6 June 2017, but having done so accepted that the Judge does not mention the expert report and appears to give no weight to the expert report without explaining why. He told me that there is an error of law and that this case requires reconsideration. Mr Diwnycz also pointed out that throughout the decision, and in the reasons for refusal letter, the appellant is referred to as having the rank of major. That, he told me, is

AA/00383/2016

AA/00384/2016

AA/00386/2016

AA/00387/2016

AA/00388/2016

incorrect, the appellant is Lieutenant Colonel. He told me that the error in relation to the appellant's rank is a matter which, in itself, requires consideration.

Analysis

12. At [24] of the decision the Judge says

I was referred to a bundle of background information including a report by Prof Christoph Bluth dated 05 /12/16.....

Thereafter the Judge makes no reference to report.

13. Between [12] and [21] of the decision the Judge sets out the appellant's claim. At [22] and [23] the Judge summarises the respondent's position. The Judge's findings are found between [27] and [53]. Between [27] and [53] the Judge explains why she finds the appellant to be neither a credible nor a reliable witness, but no consideration is given to Prof Christoph Bluth's report.

14. The Judge's record of proceedings discloses that the appellant's representative opened his submissions by relying on the witness statement, the records of interview and the expert report. The Judge's record of proceedings indicates that both parties' agents made submissions relating to the expert report.

15. In Detamu v SSHD 2006 EWCA Civ 604 the Court of Appeal said that it was an error of law to give no weight to the report of an expert who had clearly indicated his expertise and the sources for his information. In FS (Treatment of Expert evidence) Somalia [2009] UKAIT 00004 the Tribunal held that Immigration Judges have a duty to consider all the evidence before them when reaching a decision in an even handed and impartial manner. In assessing the evidence before them they must attach such weight as they consider appropriate to that evidence. It may on occasions be appropriate to reject the conclusions reached by an expert. What is crucial is that a reasoned explanation is given for so doing

16. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was

AA/00383/2016

AA/00384/2016

AA/00386/2016

AA/00387/2016

AA/00388/2016

not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

17. Because the Judge has given no consideration to an expert report the decision creates the impression that a source of evidence for the appellant has not been analysed. The decision is devoid of consideration of the expert report so that it is impossible for the objective reader to know what the Judge made of that source of evidence. It is impossible to say what weight to the Judge placed on the opinion of the expert. I have to, therefore, find that the decision is tainted by material errors of law. I must set the decision aside.

18. Because of the nature of the error a new fact-finding exercise is necessary. That fact-finding exercise can be used to correct findings in relation to the appellant's rank in the secret police. The respondent's position is that the appellant was a Lieutenant Colonel in Gaddafi's secret police.

Remittal to First-Tier Tribunal

19. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

20. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

21. I remit the matter to the First-tier Tribunal sitting at Bradford to be heard before any First-tier Judge other than Judge R Bradshaw.

Decision

Number: AA/00382/2016

AA/00383/2016

AA/00384/2016

AA/00386/2016

AA/00387/2016

AA/00388/2016

22. The appeals of the second, third, fourth, fifth and sixth appellants are all abandoned.

23. In relation to the first appellant, the decision of the First-tier Tribunal is tainted by material errors of law.

24. I set aside the Judge's decision promulgated on 12 January 2017. The first appellant's appeal is remitted to the First-tier Tribunal to be determined afresh.

Signed
2017

Paul Doyle

Date 4 August

Deputy Upper Tribunal Judge Doyle