

IMMIGRATION APPEAL TRIBUNAL

Appeal No: ME (Risk –Failed Asylum Seekers-Hassan)Libya CG [2003] UKIAT
00200

Date heard: 29/10/2003

Date notified: 17/12/2003

Before:

The Honourable Mr Justice Ouseley (President)

Mr P R Moulden

Mr J Perkins

[2003]UKIAT00200 E(Libya)

Appellant

The Secretary of State for the Home Department

Respondents

Determination and Reasons

1) Before us Ms S Conlan, a legal representative from TRP solicitors, appeared for the Appellant and Mr M J Blundell, a Home Office Presenting Officer, appeared for the Respondent.

2) The Appellant is a citizen of Libya. He was born on 22nd July 1970 and so is now aged 33 years. In a determination promulgated on 3rd July 2003, an Adjudicator, Mr J F W Phillips, dismissed his appeal against a decision of the Secretary of State that he was not entitled to refugee status and that removing him would not be contrary to the United Kingdom's obligations under the European Convention on Human Rights. It is against that decision that he appeals. Following statutory review under section 101(2) of the Nationality, Immigration and Asylum Act 2002, Maurice Kay J held that it was arguable that the Appellant would risk persecution or other serious ill-treatment in the event of his return even though the Adjudicator had found the Appellant to be untruthful in important respects.

3) The Appellant said that he arrived in the United Kingdom on 30th December 2002. He claimed asylum on 9th January 2003. He has now been in the United Kingdom for almost a year.

4) The Adjudicator summarised the Appellant's in paragraph 17. The Appellant is a medical practitioner. On 25th October 2002, four prisoners were brought to the hospital where he worked. They were each in a bad condition and one of them died. A colleague of the Appellant's was asked to provide a death certificate showing, untruthfully, that the prisoner died of natural causes. The medical practitioners believed that he had died as a result of ill-treatment and poor prison conditions. The Appellant and his colleagues decided to submit a truthful report to two human rights organisations, one in Switzerland and one in Holland. On 26th December 2002, the

Appellant was on holiday when he received a telephone call telling him that two of his colleagues had been arrested. The Appellant said he went immediately to Tunisia which he entered illegally on a desert track that had no customs or immigration control. He then made his way to the United Kingdom where he sought asylum. The Adjudicator believed that the Appellant is a medical practitioner but not much else that he said. In particular, the Adjudicator did not believe that the Appellant was part of a group that compiled a report to submit to human rights organisations or that the Appellant left Libya in fear of imminent arrest or that his colleagues and family members have been arrested or that he told the truth about his mode of entry and date of entry to the United Kingdom.

5) Ms Conlan's primary submission was very simple. She said that it is not safe to return this Appellant to Libya. She supported this proposition with reference to background material.

6) She referred to a Tribunal decision in the case of *Hassan [2002] UKIAT 00062* where the Tribunal referred to advice from the Foreign & Commonwealth Office of Libya that anyone returned to Libya after an absence in excess of six months is subject to interrogation by the security authorities. Such people are routinely imprisoned by administrative order for "*having shown disloyalty to the state*". That case was decided in February 2002.

7) We were also shown a letter from the Foreign & Commonwealth Office dated 15th April 2002, which said that returnees to Libya would not generally face serious difficulties provided they had not been involved in "*anti-regime activities*". The Libyan authorities appeared to be taking a more relaxed view. At a meeting in January 2002, Her Majesty's Ambassador in Tripoli was told that economic migrants and those who have committed crimes were unlikely to be of any significance to the security authorities. The letter indicated that the information given to the Ambassador formally was consistent with the information given by the Embassy's legal adviser. The Embassy accepted that travel documents might well highlight a returned person for special attention by the Internal Security Authorities and if there was anything in a person's record it might well turn up when the name was researched. Subject to that qualification, Her Majesty's Ambassador in Tripoli was confident in his sources and believed that it should be possible to return some categories of migrant without a breach of the European Convention on Human Rights.

8) Ms Conlan then took us to a letter from Amnesty International dated 5th September 2003. This noted that Amnesty International continues to be "*extremely concerned about the fate of rejected asylum seekers who have been returned to Libya*". Amnesty International has followed up cases of forcible return to Libya since the mid 1990s. In those cases that it had investigated, the asylum seeker had been detained upon return and either remained in detention or no information is available about their plight. There were several cases in which Amnesty International was satisfied that the forcibly returned person had been subjected to serious human rights violations including torture. The letter then gave an example of people detained in Jordan on suspicion of sympathising with Islamist groups. It was reported that three of those

returned had been killed. The Libyan authorities did not respond to the allegations. Amnesty International was satisfied that an asylum seeker returned by the United Kingdom in April 2000 was detained following his return. The letter also explained that it was difficult to investigate such things in Libya as a climate of fear prevented people from reporting their concerns to human rights groups around the world. Amnesty International believed there were hundreds of political prisoners in Libya. Many of them are reported to have died. Finally, Amnesty International expressed concern that information about the history of cases of asylum seekers and overstayers in the United Kingdom was readily available to the Libyan authorities and in the eyes of the Libyan Government making a refugee claim is an act of opposition and any Government opponent is at risk of being brutally punished.

9) We were referred to a translation of a Dutch report dated November 2002. This noted the UNHCR recommendation of October 2000 that caution was needed before asylum seekers could be returned to Libya. Reports showed that people leaving Libya are subject to very strict controls. Until autumn 2001, all Libyans who had stayed longer than six months were interviewed about their activities and contacts on their return to Libya. More recently, the authorities have ceased to apply the six-month rule, but all those who have stayed abroad for longer periods will be interviewed by the Libyan security services on return. It seems that the longer the stay abroad, the greater the chance of a person being stopped and interrogated. Nevertheless, the point was that an asylum application is not in itself a reason to attract special interest. The rejected asylum seekers, most of whom have spent a long time out of Libya, are likely to be held for a few days for interview. Rejected asylum seekers removed with an escort would be arrested and detained and interviewed. Nevertheless, the report found examples of rejected asylum seekers being forcibly returned to Libya and then resuming their life in Libya unhindered. In the opinion of the report, the essential difference lay in the person's activity outside Libya. Those who were involved in, or suspected of, opposition activities were treated much less well than those who were not.

10) We were then taken to the reasoning in the case of *A v Secretary of State for the Home Department [2002] UKIAT 07355*, which emphasised that the applicant in that case was safe because he would be able to give a detailed explanation of his activities in the United Kingdom. Whilst they were very much to his discredit, they were not political. It is a case in which the particular facts are of some importance; it is being appealed.

11) In this case, the Appellant's lack of a passport (or if he obtained his passport the lack of appropriate exit stamps) would, if submitted, attract attention.

12) We were referred to a letter from the Libyan Union for Human Rights Defenders. It is dated 17th October 2003, and says that the Appellant introduced himself to the organisation after he had presented himself to the United Kingdom authorities. The writer expresses himself "*pleased to know*" the Appellant who presented himself to the organisation after he left Libya. It does not suggest that the organisation knew of the Appellant in Libya or that he had done anything there to support them. It simply does not support the Appellant's case about his activities in Libya, notwithstanding the writer's opinion that the Appellant's identity is now exposed.

13) Mr Blundell submitted that the Appellant had not proved his case. He reminded us that the Adjudicator had fundamentally disbelieved the Appellant. The Adjudicator was particularly dismissive of the Appellant's claim that he had not been able to contact Libyan-based human rights organisations in the United Kingdom. The Appellant presented as an intelligent and educated man. The Adjudicator did not believe that he could not have made contact if that had been his intention. He particularly did not believe that the Appellant did not know how to use an internet search engine.

14) Read carefully, the background material showed there was a risk of returning people who were perceived as enemies of the state. That perception would not extend to this Appellant. This was particularly the case now that the authorities had relaxed the policy of interrogating anyone who had been out of Libya for more than six months. It was noted that the UNHCR did not advise a blanket ban on removals to Libya.

15) The Amnesty International papers concerned suspected opponents of the Libyan Government, especially members or sympathisers with Islamist groups. The US Department of State Report for 2002 bemoaned the poor human rights record of the Government of Libya and acknowledged the detention of "*many political detainees*" for years without charge or trial. The Human Rights Solidarity Report referred to the problems of suspected opponents of the Libyan Government. The same organisation reported in detail on people returned by the Government of Jordan. Three of them or more were killed on arrival at Tripoli. However, the report does not give details about their actual or suspected activities. The letter from Amnesty International of 5th September 2003 refers to people being deported from Jordan on suspicion of being sympathisers with Islamist groups. Amnesty International expressed concern about the possible fate of returned asylum seekers and overstayers from the United Kingdom, but was not able to point to evidence of their coming to any harm.

16) The Dutch report emphasises the essential difference between the treatment of people suspected of opposition activities in or outside Libya and people not suspected of these. Suspicion of opposition activities is enough to ensure prolonged detention and questioning. Association with an opponent of the Government is sufficient excuse to be detained and interviewed. Torture was a possibility facing any detained asylum seeker.

17) Later the Dutch report noted that although there was a widespread practice of interviewing returned asylum seekers and that anyone who had stayed abroad for "*longer periods*", the focus of the concern was opposition activity. The report concluded that an asylum application abroad is in itself no reason to attract the special interest by the Libyan authorities and this report records examples of removed rejected asylum seekers resuming life in Libya unhindered.

18) Mr Blundell submitted that the decision in *Hassan* had to be understood in the context of the Home Office policy then in operation. It was then believed to be the case, and may well have been the case, that all returned asylum seekers who were perceived as enemies of the Government risked persecution for that reason. The Home Office policy had changed. *Hassan* did not mean that a person returned to Libya would be at risk now.

19) Ms Conlan disagreed with that analysis of *Hassan*. In her submission, what mattered was the evidence that gave rise to the policy. That the policy had been withdrawn or altered did not affect at all the evidence of risk which underlay it. This was not a case where the Appellant can easily provide an explanation for his presence in the United Kingdom that will satisfy the Libyan authorities. She submitted that the Appellant was and remained at risk.

20) Without in any way seeking to minimise the measured and full submissions from both parties, it does seem to us that the key to this case lies in the final exchanges. It is plain that people who are suspected of serious involvement with anti-Libyan political groups are at risk in the event of their return. Then it is argued that there is evidence before us that this risk extends to everyone because the act of seeking asylum abroad is seen as an act against the Government of Libya. It is plain that this cannot be right. The Dutch report shows people who have been returned as failed asylum seekers now going about their business in Libya. They had not been persecuted on their return and are not persecuted now. If it were the case that every failed asylum seeker was at risk there would be no examples of people being returned safely. Although the background material is sensitive to the theoretical risk facing people who have done nothing more serious to undermine the regime of Libya than to seek asylum somewhere else, there is no direct evidence of such a person being persecuted. The examples of people being seriously ill-treated all appear to relate to those who have been involved, or at least seriously suspected of being involved, in serious political activity or are radical Islamic supporters. We recognise that the absence of such evidence is not positive proof that a returned asylum seeker would be safe, but it must show that the risks are not as real as some of the background material might at first suggest. This is particularly the case given that the Dutch report has found people who would appear to have been qualified for ill-treatment because they had applied for asylum not being ill-treated or persecuted in any way.

21) It must be the case that the bald assertion that any returned asylum seeker will be persecuted because they will be perceived as someone taking a stance against the Government is wrong.

22) Applying this finding to this particular case, we find there is no risk to this Appellant. He is a failed asylum seeker who has been disbelieved. We do not accept that he is at risk because of any contact he may now have made whilst in the United Kingdom. His claims of political activity, and as to the circumstances of his departure, were disbelieved. His evidence was regarded as so unreliable that it cannot be regarded as sound either as to mode of departure or even as to the whereabouts and contents of his passport. There is nothing to be drawn from his evidence other than that he was a doctor who left Libya for a myriad of possible reasons, professional, personal or domestic, but not political.

23) The letter of 17th October 2003 from the Libyan Union for Human Rights Defenders does say that the Appellant's identity is exposed and continues "*therefore he is in fact wanted by the Libyan authorities and his life will be at risk if the authorities in Libya catch him as he is one of the information sources that showed to the world the gross human rights abuses in Libya*".

24) These are extravagant claims, but we see no justification for them. That the Appellant has contacted them simply does not mean that the authorities in Libya will know about that contact. The reliability of the source of the document, and the basis of its information, are less than clear. It follows contact by the Appellant and a request for assistance by solicitors which spelt out their client's disbelieved case. It was merely produced by solicitors with no more supporting testimony. It was produced shortly before the appeal: there is no reason why it could not have been produced for the Adjudicator.

25) In the circumstances, we dismiss this appeal.

Mr J Perkins
Vice President
Dated 10 December 2003

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