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MO (Libya – jurisdiction) Libya
[2005] UKIAT 00017

Heard at: Field House
On 11 October 2004
Prepared 11 October 2004

**IMMIGRATION APPEAL TRIBUNAL**

Date Determination notified:

24 January 2005

**Before :**

**Mr D K Allen (Vice President)**
**Mrs M L Roe**
**Mr M S W Hoyle**

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

**APPELLANT**

**and**

**RESPONDENT**

**DETERMINATION AND REASONS**

1. The Secretary of State appeals to the Tribunal with permission against the determination of an Adjudicator, Mr P F Hague, in which he allowed the appeal of the respondent (hereafter referred to as the claimant) against the Secretary of State's decision of 15 January 2002 refusing asylum.

2. The hearing before us took place on 11 October 2004. Mr Hollings-Tennant appeared on behalf of the Secretary of State and Mr A Rosemarine for Noden & Co Solicitors appeared on behalf of the claimant.

3. At the outset, Mr Rosemarine argued four preliminary points concerning jurisdiction, and a further point concerning an application to adduce evidence.

4. The first point was that permission to appeal could not be granted in respect of an application which did not contain a declaration of truth. He pointed to the fact that the application was signed by someone on behalf of a Victoria Jones, who was believed to be a Presenting Officer. He contended that a Declaration of Truth was required and it was common to both sides to believe that it was required as there was to be found above the signature and quotation marks the statement "I believe the facts stated in this application are true". The Home Office were seeking to say that another person could purport to sign this declaration on behalf of someone else who drew up the grounds and that would totally deny the whole purpose of it being a statement of truth.

5. Mr Rosemarine considered that it did not have to be a person who had been at the hearing but while the claim was that the Adjudicator had failed to consider an issue, the person who had written the application was not present and the force of the application was diminished to a degree. The person who formulated the application had not stated it to be true and did not say he had her authority and there was no certificate either. The person signing it had to believe that what they signed was true and there was no evidence that the Presenting Officer had indicated to him that he could sign. The declaration was similar to an oath.

6. Mr Hollings-Tennant regarded the point as a novel one. He confirmed that Miss Jones was a Presenting Officer. Rule 17 of the Procedure Rules did not state that it was not possible to sign on behalf of someone else.

7. Mr Rosemarine's second point was that the Vice President who had granted permission had expressly done so in respect of a determination of Mr D M Brunnen. There was no indication that Mr Hague's determination had been considered. There was nothing in the Grant of Permission to indicate that Mr Hague's determination had been considered at all. It was accepted that a copy of that determination was attached to the application for permission, but that could be purely administrative. The lack of reasons also meant that there was nothing to link the Grant of Permission to Mr Hague's determination and nothing to show that the Vice President had considered Mr Hague's determination and indeed there was reason to suggest that he had not.

8. In relation to this point Mr Hollings-Tennant stated that he had not seen this as an issue but pointed out that the correct respondent's name had been employed and also the correct nationality was identified. He referred us to Rule 18. The determination of Mr Hague was attached to the challenge to that determination.

9. Mr Rosemarine's third point was that it was necessary for there to be reasons when permission for appeal was granted and all that was stated in the Grant of Permission was that the Grounds of Appeal were arguable and the Vice President gave permission to appeal. The reasons were necessary in order to enable the disappointed party to know why permission had been granted and whether or not there was an error of law. The grant went contrary to Rule 18 (vii) of the Procedure Rules which required the determination of a Grant of Permission to indicate the grounds upon which permission to appeal was granted.

10. The next point raised by Mr Rosemarine was that on the surface the only ground challenged by the Secretary of State was patently false. The grounds were entirely based on the point beginning at paragraph 4 of the application concerning the contention that the Adjudicator had failed to consider background evidence from the Libya bulletin of 25 March 2003. He also made the point that these matters were not meant to be submissions but rather matters which were believed to be true. In fact the point argued was false, and the Tribunal was referred to paragraph 18 of the Adjudicator's determination where he clearly referred to the matters set out at paragraph 4 on the grounds. The Procedure Rules required that the grounds showed that the appeal would succeed and ground 4 was patently false and so there was no way in which the appeal could succeed and hence the Vice President did not have jurisdiction to grant permission.

11. Mr Hollings-Tennant argued that the author of the grounds was looking at the Adjudicator's failure to consider the objective evidence concerning failed asylum seekers and he had not fully considered the point as he had found the claimant not to be credible and this was the point in the grounds at paragraph 5. There was a lack of clear findings of fact with regard to risk to asylum seekers per se and why the claimant did not face a real risk.

12. Mr Rosemarine contended that the Home Office was now raising a new issue about risk to failed asylum seekers and that was only mentioned at paragraph 5 of the grounds in connection with the piece of evidence which it was said the Adjudicator had failed to consider. The Home Office was seeking to suggest that credibility had been refuted but in

fact some of the claim had been accepted with regard to wholesale persecution of members of the claimant's family, and the brother's evidence had been accepted. There was no suggestion that the findings of fact were unsustainable.

13. The final point raised by Mr Rosemarine concerned an application for a further witness who was here today. Mr Hollings-Tennant had said he had not been told of this and he had given Mr Hollings-Tennant a witness statement. As to why the evidence was so late this was because the Solicitor in charge of the case had left and someone else had taken over the file. This was no fault of the claimant and there had been an oversight as to why the witness was not called before the original hearing and the matter had not been raised at all as it was thought that the evidence at the original hearing was enough and funding was now enormously restricted so it had not been possible to call all the witnesses that one might wish.

14. In this regard, Mr Hollings-Tennant made the point that the witness statement had not been served in accordance with directions. They were different dates on different versions of the statement. In any event, it was on the basis that the claimant was credible which went contrary to the Adjudicator's views, and there was no respondent's notice.

15. We adjourned to give consideration to the various points raised and then informed the parties of our conclusions on them. It will be convenient if we take them in the same order as they were raised by Mr Rosemarine.

16. The first point concerned the fact that the grounds of appeal were signed on behalf of Victoria Jones who is a Presenting Officer who it may be taken was the person who drafted the grounds of appeal. Paragraph 17 of the Procedure Rules deals with issues concerning the form and contents of an application notice for the Tribunal. It is convenient if we set out the terms of Rule 17 in full.

> 17 (1) An application notice for permission to appeal must
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> be in the appropriate prescribed form and must:-
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> a) State the appellant's name and address; and,
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> b) State whether the appellant has authorised a representative to act for him in the appeal and, if so, give the representative's name and address.

(2) The application notice must state all the grounds of appeal and give reasons in support of those grounds.

(3) The grounds of appeal must:-

c) identify the alleged errors of law in the Adjudicator's determination; and,

d) explain why such errors made a material difference to the decision.

(4) The application notice must be signed by the respondant or his representative, and dated.

(5) If an application notice is signed by the appellant's representative, the representative must certify in the application notice that he has completed the application notice in accordance with the appellant's instructions.

(6) There must be attached to the application notice a clear and complete copy of the Adjudicator's determination together with a copy of any other material relied on.

17. Rule 18 of the Procedure Rules states as follows:-

18 (1) An application for permission to appeal to the Tribunal must be decided by a legally qualified member of the Tribunal without a hearing.

(2) The Tribunal is not required to consider any grounds of appeal other than those included in the application.

(3) The Tribunal may grant or refuse permission to appeal.

(4) The Tribunal may grant permission to appeal only if it is satisfied that:-

a) The appeal would have a real prospect of success; or,

b) There is some other compelling reason why the appeal should be heard.

(5) Where the Tribunal grants permission to appeal, it may limit the permission to one or more of the grounds of appeal specified in the application.

(6) The Tribunal's determination must include its reasons, which may be in summary form.

(7) Where the Tribunal grants permission to appeal:-

a) Its determination must indicate the grounds upon which permission to appeal is granted; and,

b) The appellate authority must serve on the respondent, together with the determination, a copy of the application notice and the documents which were attached to it.

18. It can be seen from Rule 17 and in particular from Rule 17(iv) that there is a requirement that the application notice be signed by the appellant or his representative and dated. That was clearly done in this case. We do not think it can properly be denied that whoever it was (the handwriting is somewhat unclear) it is signed on behalf of Miss Jones and in their capacity as the Secretary of State's representative, and indeed that is stated in the box below. The statement in quotation marks `I believe that the facts stated in this application are true' does not form part of the requirements of Rule 17. It is certainly a matter concerning which a slightly different form is to be found in the draft form attached to the Procedure Rules in that the representative undertakes that they are giving the application in accordance with the appellant's instructions and that the appellant believes the facts stated in the application are true, but as we say that does not form any formal part of the requirements of the Procedure Rules. Even if it did, we can see no reason why the signature could not be provided on behalf of the Presenting Officer whose name is given undertaking to that effect. The suggestion that what is required here is something in the nature of an oath we find to be entirely unwarranted in the wording of the rules or indeed in our understanding of how they operate in practice.

19. One can imagine the number of possibilities in which this kind of requirement if it were one, would prove entirely unworkable. For example, Miss Jones might have been taken ill and unable to sign the form at the time when it had to be submitted, and bearing in mind the very tight time limits that exist in this jurisdiction, it would be absurd if someone else was not able to sign on her behalf. Another possibility might, in the case of a claimant, who was appealing to the Tribunal, be that Counsel who drafted the grounds of appeal but was for whatever practical reason, unable to sign them. It would be absurd if the form could not then be signed on Counsel's behalf by a member of the firm of Solicitors instructing him or her. We can see no merit to this challenge to the form in which permission was sought in this case and do not consider that it any sense invalidates the Tribunal's jurisdiction to hear the appeal.

20 The second point concerns the error by the Vice President in granting permission in naming the wrong Adjudicator. As Mr Hollings-Tennant pointed out, the Vice President named the correct claimant and also his nationality and clearly cited the proper appeal number at the top right hand part of the Grant of Permission form. It is also the case, as Mr Rosemarine acknowledged, that the copy of the Adjudicator's determination was attached to the grounds of appeal in relation to which permission was granted. It seems to us entirely clear in the circumstances that the error of name of the Adjudicator was the only matter that could give cause for any doubt, and all the other matters to which we have referred above make it sufficiently clear that the Vice President was considering the determination of Mr Hague. We again see no merit in this point.

21. Mr Rosemarine in his third point raises the brief terms in which permission was granted. It is clear from Rule 18(vi) that the Tribunal's determination must include its reasons which may be in summary form, and from 18(vii) we see that the Tribunal in granting permission must indicate the grounds upon which permission to appeal is granted.

22. With regard to this point we make the following comments.

Firstly, by way of partial explanation, is the fact that, as we believe is tolerably well-known, Vice Presidents have to consider a very significant number of applications within a very short period of time. Inevitably, this means that the kind of detail which, in an ideal world might be given in grants or refusals of permission, cannot always be provided. Clearly such matters could not excuse a failure to comply with the requirements of the rules and we are in no

sense suggesting that any such failures could be excused by time constraints. It is simply by way of explanation for the element of terseness that may be found from time to time in the grant or refusal of permission. Particularly, this is so in relation to grants of permission. In this case, we are entirely satisfied that the Vice President did not fall into error in setting out his reasons for the decision in the manner in which he did. The grant of permission is clearly made by reference to the Secretary of State's grounds of appeal. Those grounds are attached to the determination and consist of five points only occupying a relatively short amount of space. We see no disadvantage to someone such as the claimant in this case in the reasons not being spelt out in the grant of permission, since he or his representatives only have to read the brief grounds of appeal in order to be entirely clear in relation to what matters it was that permission was granted in. Indeed, Mr Rosemarine, for example, does not appear to have been handicapped in his submissions before us by a lack of understanding as to what the issues before the Tribunal were. We therefore see no merit to this submission.

23. The next point concerns the claim that the matter in relation to which it is contended that the Secretary of State believed to be true is a falsehood, that being the claim that the Adjudicator did not give consideration to a report which it is contended he did consider. It is however, important, as we pointed out to Mr Rosemarine in argument, to bear in mind the second part of ground five. There it is submitted that the appellant would not be at risk on return to Libya as the Country Evidence shows that all rejected asylum seekers are interviewed yet so far there have been no reported repercussions arising from this practice and therefore such treatment could not be defined as ill-treatment or persecution. It is the case, therefore, as Mr Hollings-Tennant argued, that the Adjudicator in effect, failed to apply the objective evidence to the findings he had made. He had found that the claimant had told him untruths specifically, with regard to the claim that he had been detained and tortured and yet the Adjudicator found that he was at risk on return which it was contended was not a conclusion to which he was entitled to come. As we also pointed out to Mr Rosemarine, it is not the case that the grounds of appeal have to be correct ultimately, but rather that they give rise to an arguable issue which the Vice President clearly considered was the case and for what it is worth we are entirely in agreement with the view that he can be taken to have expressed on that point. Accordingly, we do not accept that ground four of the grounds of appeal is patently false, but rather that what

was said about it in ground four has to be read together with ground five as indicating an arguable error of law.

24. We were therefore not with Mr Rosemarine on any of the preliminary matters that he raised with regard to jurisdiction.

25. As regards the request for an adjournment, it is clearly the case that standard directions concerning the time prior to the hearing in which evidence must be submitted or requests for oral evidence made had not been complied with at the time when on the 7 October 2004 an application was made to put in a letter of support from Libya Watch and excerpts from a book and also permission was sought for Mr Abdul Malek of Libya Watch to give evidence. A further fax was sent on 8 October 2004 providing an amended version of the Libya Watch Report. We note that the same representatives and indeed counsel have been involved in this matter since it was heard by the Adjudicator in July 2003 with the determination being promulgated in August of that year. We also note that the date of the Libya Watch Report is 6 May 2004 and Mrs Thatcher's book "Statecraft" to which it was proposed to refer was published in the year 2000. We see very little merit to Mr Rosemarine's explanation as to the reasons why it was sought so late in the day to put this evidence in, and we do not consider that it complies in any sense with the requirements in **Ladd v Marshall**. In any event, as Mr Hollings-Tennant pointed out, the Libya Watch Report appears to be based upon an acceptance of the claimant's credibility which was of course in significant respects rejected by the Adjudicator and we see little, if anything in that Report which goes beyond the objective evidence which was already to be found in Mr Rosemarine's bundle. Accordingly, we stated that that evidence would not be allowed in.

26. Thereafter, Mr Hollings-Tennant produced two determinations of the Tribunal in **E Libya** and **KK Failed Asylum Seeker – Libya** and Mr Rosemarine objected to the late production of these but we gave him the opportunity to read them and consider them.

27. When we re-convened, Mr Rosemarine contended that the Adjudicator had accepted that the respondent was detained and tortured. We pointed out that that went contrary to the Adjudicator's finding at paragraph 16 of his determination as follows:

"He may have been questioned in the past but was not detained; he has not been tortured."

28. It occurred to us, however, that there might be a difficulty with regard to the Adjudicator's apparent acceptance of the evidence of the appellant's brother . statement is to be found at pages 12-14 of the bundle before the Adjudicator. We note from that at paragraph 7 that he stated that some time in 1999, someone told him that his brother had been arrested and detained by the Libyan government. There is a further reference at paragraph 9 that he sincerely believes that if he had not flown in 1997 he would have been arrested and tortured just like his brother and his other brothers and father were arrested and detained. It is clear from paragraph 10(iv) of the Adjudicator's determination that the statement was before the Adjudicator and that also gave evidence. The Adjudicator noted at paragraph 14 of the determination that he found to be a credible witness and referred to him as being moderate in his evidence and speaking only of things prior to his own departure in 1997 and acknowledging ignorance of matters that might have been within his knowledge and which he could have been expected to give answer to had he been a rehearsed witness. The Adjudicator did not however, refer to the specific matters which we have quoted from statement of the 20 June 2003. Certainly, in that statement, he was not speaking only of things prior to his own departure in 1997, and there is no indication in the determination that the Adjudicator gave any thought to the extent to which the statements to which we have referred to above in statements might have provided corroboration for the claimant's account.

29. Mr Rosemarine sought to persuade us that we could dismiss the appeal outright without needing to remit for an Adjudicator to consider the particular aspects of 's evidence on which the Adjudicator had not made findings. He took us to the objective evidence in his bundle and distinguished **E** and **KK** on the basis that the claimant's family was connected with the opposition and as a consequence, he was at risk on return of detention and therefore of significant ill-treatment.

30. Despite Mr Rosemarine's submissions on this matter, we do not

consider that the appeal can properly be dismissed on the facts as found by the Adjudicator. The Adjudicator disbelieved, as we have noted above, the claim by the claimant that he had been detained and ill-treated. He accepted no more than that it was likely that his family had had political and opposition involvement and that he himself had been questioned in the past. It would appear that no more had happened to him, on the Adjudicator's findings, than that since the arrest of his brothers in 1992 he and another brother and his father had been periodically taken in for questioning and the house searched. We do not consider on the objective evidence as put before us by Mr Rosemarine or from our reading of **E** and **KK**, that a person with such a history faces a real risk of persecution and breach of his human rights on return to Libya. If he were of that degree of interest to the authorities then he would have experienced more than the Adjudicator found him to have experienced in that period of seven or so years. We do not consider that the fact that he has been away from Libya for several years and in the United Kingdom materially affects the risk. Accordingly, we have concluded that the failure by the Adjudicator to give consideration to and make specific findings on the particular aspects of 's evidence to which we have referred above entails that this appeal must be remitted for consideration afresh by an Adjudicator other than Mr Hague. To that extent, this appeal is allowed.

**D K ALLEN**
**VICE PRESIDENT**