

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 9 December 2003

Date Determination notified

24 February 2004

Before:

Dr H H Storey (Chairman)
Mr M W Rapinet

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

DETERMINATION AND REASONS

1. The appellant, a national of Libya, appeals with leave of the Tribunal against a decision to remove him having refused to grant asylum. Miss R. Doughney of Counsel instructed by Halliday Reeves solicitors represented the appellant. Ms R. Giltrow appeared for the respondent.
2. In granting leave the Acting Vice President limited the issue to whether return of the claimant to Libya would give rise to a violation of Article 3. He saw no basis in the challenges made against the Adjudicator's adverse credibility findings. Nor do we. The sole issue concerned whether failed asylum seekers per se are at risk on return to Libya.
3. The Adjudicator in this case had before him the Tribunal decision in Hassan [2002] UKIAT 00062. In Hassan the Tribunal referred to advice from the Foreign & Commonwealth Office that anyone returned to Libya after an absence in excess of six months is subject to interrogation b

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.

4. In deciding not to follow Hassan, the Adjudicator noted that the Foreign & Commonwealth Office had issued a new report in October 2002 which considered that failed asylum seekers were no longer at risk of a violation of Article 3.
5. The grounds of appeal contended that in view of the contents of the US State Department Report for 2003, the Adjudicator should have found that there remained a real risk of serious harm. That report said that security personnel routinely torture prisoners during interrogation. Since the Adjudicator accepted that an interrogation would take place, the appellant would be likely to face ill-treatment.
6. In amplifying the grounds of appeal Miss Doughney highlighted the fact that the appellant had been in the UK for five years. Both the US State Department Report for 2003 and the recent CIPU Bulletin demonstrate that there was still a real risk of interrogation and consequent ill-treatment.
7. Miss Giltrow made reference to a Dutch government report of November 2002 and maintained that the burden of the latest objective evidence was that only returnees known to have been involved in political activity opposed to the current regime would be at risk on return. The appellant's claim in this case to be involved in *sur plus* activities against the current regime had been found totally lacking in credibility. The appellant had no political profile. He had returned to Iraq (from Switzerland) twice before without any credible difficulties.
8. We would accept that there is objective evidence stating that security personnel routinely ill-treat those they interrogate. However, the reference in the US State Department Report 2003 (and the CIPU reference to similar effect) is generalised and does not specify whether failed asylum seekers are interrogated and ill-treated on return. That is particularly important in this case because there are recent objective sources which have specifically examined risk to failed asylum seekers. There is first of all the Dutch report of November 2002. The report is translated in the Annex to the CIPU Bulletin 01/2003 on Libya. This report noted that since autumn 2001 the Libyan authorities have ceased to apply the six month rule under which all those abroad longer than six months faced interview by the Libyan security service on return. Furthermore, the report which made reference to documented cases, concluded that whilst rejected asylum

seekers were likely to be held for a few days for interview, those who were involved in, or suspected of, opposition activities were treated much less well than those who were not. Length of absence abroad, on its own, did not appear to be a determinative factor.

9. In addition to the Dutch report there is also the latest Foreign and Commonwealth advice of 29 April 2003 and recent UNHCR advice. All three sources no longer advise a blanket ban on removals to Libya.
10. In our view the latest objective evidence only continues to support a finding of real risk in respect of returnees who are perceived by the authorities to have a profile of political opposition. Clearly such persons upon return would continue to find that interrogation at the hands of security personnel led on to ill-treatment. However, for those who have no political profile the evidence does not demonstrate a real risk of ill-treatment.
11. The appellant in this case was found to have no political profile. Accordingly, we conclude that the Adjudicator was quite entitled to conclude that the appellant would not on return face a real risk of serious harm.
12. We would add that the decision we have reached in this case accords with that reached by a Tribunal chaired by the President sitting in October 2003. In this case, E (Libya) [2003] 00200, having concluded the Dutch report and the relevant materials, including an Amnesty International letter of September 2003, the Tribunal concluded that it was only in relation to returnees perceived to have been or to be involved in, or at least seriously suspected of being involved in, oppositionist political activity or who are perceived as radical Islamic supporters, that there is a real risk of treatment contrary to Article 3.

**H.H. STOREY
VICE PRESIDENT**