



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/00263/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard Cardiff Civil Justice Centre

**Decision
Promulgated**

&

Reasons

On 20 September 2018

On 01 November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

S Y R

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Claimant: Ms Zapata Besso, Counsel

For the Secretary of State: Mr Howells, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Ethiopia. The Respondent refused her application for asylum and humanitarian protection in a decision letter dated 20 December 2017. The Respondent also decided that she failed to meet the requirements of the Immigration Rules for leave to remain on the basis of her family life or private life in the United Kingdom.
2. The Appellant appealed the Respondent's decision and her appeal came before First-tier Tribunal Judge N J Osborne, who in a Decision and Reasons promulgated on 17 May 2018 dismissed her appeal on all grounds.

3. The Appellant then sought permission to appeal against the decision of Judge Osborne and permission was granted by First-tier Tribunal Judge P J M Hollingworth who concluded that it was arguable that the Judge had set out insufficient analysis of background material in relation to activities of the Ethiopian government outside Ethiopia or in relation to social media; of the Appellant not being required to dissimulate upon return if asked questions irrespective of whether the Appellant was a member or supporter of the OLF and had set out an insufficient analysis of the relationship between the degree of sophistication of the Ethiopian authorities within Ethiopia and the examination of social media appertaining to issues within Ethiopia. It was arguable that the Judge had set out insufficient analysis of the perception of the Ethiopian authorities of demonstrations such as those the Appellant took part in relation to the question of risk.

The Grounds

4. The grounds are drafted by the Appellant and state that the Appellant had been clear throughout her case that she was a supporter of OLF and not a member. The Appellant states that she had submitted evidence that the Ethiopian government held great interest in those who attended demonstrations in the UK. She states that she is at risk on return for having attended these demonstrations and just because only a handful of people had seen the YouTube video she appeared in this did not mean that at least one of those was a not government agent or someone who would inform the government about their activities. There were videos of demonstrations in the UK that had been viewed hundreds and thousands of times. She decided to return to Ethiopia from Yemen before she knew about her parents. There was a civil war on in Yemen so she had to leave. Her aunt told her on the phone not to come back but didn't tell her about her parents until they reunited. It would have been too dangerous for her to tell the Appellant about her parents over the telephone.

The Hearing

5. The appeal therefore came before the Upper Tribunal in order to determine whether there was an error of law in the decision of Judge Osborne and if so whether to set that decision aside.
6. Ms Zapato Besso applied to amend the grounds of appeal on the basis that they were drafted by the Appellant and that the new grounds were not a distinct challenge. Mr Howells stated that he was aware of the proposed grounds and had no objection despite the lateness of the application.

The power to permit the amendment to the grounds of appeal as "a document" before the Upper Tribunal is contained in rule 5(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008. That power is subject to the overriding objectives set out in Rule 2 of the 2008 Rules to deal with the case "fairly and justly" including having regard to the factors set out in Rule 2 (2). There is a structural framework to the Rules which involves the making of an application in respect of which permission can be granted if

there is an arguable case. The Respondent then has an opportunity to file a rule 24 Reply. However, in view of the Respondent's agreement in this case that she is not prejudiced and the fact that is arguable that the additional grounds flow from the original ones, I concluded that it was fair and just to permit the amendment.

7. I heard submissions from both representatives. Miss Zapata Besso submitted that in relation to her Ground 1, undue weight was attached to the inconsistencies in the Appellant's evidence as to her OLF membership. Her case was that she had always been a supporter and not a member. She did use the word member in her asylum interview. Whilst the Judge noted at paragraph 25 that she was using an interpreter, no weight appeared to be attached to the fact that there is a fine line semantically between member and supporter. The Judge did not bear in mind that she had little education and was working through an interpreter. There was a real possibility that the distinction was not recognised. Nowhere in the substantive interview did she say that she was a member and not a supporter and the Judge failed to consider what was in her mind at that time.
8. She submitted that undue weight was attached to issue of the Appellant's return to Ethiopia and there was a failure to take into account relevant expert evidence in this regard. Undue weight was attached to positive credibility factors and no adequate reasons were given for placing no weight on photos provided by the Appellant of herself at demonstrations going to the issues of credibility and risk.
9. Ground 2 related to the fact that the Judge placed too much weight on perceived inconsistencies when they were not inconsistencies at all. Great weight was placed on the fact that her aunt allowed her to return to Ethiopia once she knew that her parents had been arrested as OLF members and Judge found this implausible. The Judge failed to have regard at all to the expert country report of Claire Beston where she explicitly stated at 30, 50 and 91 that she did not find it implausible that she was able to exit and enter again and that she had interviewed dozens of people. She explained that the authorities' intention is to silence people and allowing her to exit and enter was not implausible. The Judge had given no reason for rejecting expert's findings in this regard. His rejection was internally inconsistent with his assessment of the fact that the expert was a genuine Oromo expert.
10. The Judge placed weight on the fact that she said in her screening interview that her aunt told her that her parents had been arrested and in her substantive interview that her aunt told her over the phone. He then said that there was a further inconsistency at paragraph 13. In fact, the Appellant stated in her witness statement that she was told about her parent's arrest in the airport by her aunt. Her account in her witness statement was consistent with account in screening interview. Paragraph 32 of the Judgment was wrong in that it said there were three accounts. There were actually two inconsistent statements not three as between

asylum interview and screening interview and not as between them and the witness statement.

11. At paragraph 34 the Judge took this discrepancy to undermine her support for the OLF. Apart from the fact that her account of when her parents were arrested did not go to her personal political beliefs, the Judge placed undue weight on this discrepancy because he did not place weight on other credibility factors.
12. Ground 3 was that insufficient weight was attached to positive credibility factors. The Judge failed to have any regard to independent objective evidence in the form of the expert's report in assessing the credibility of her claim to be pro OLF. There were points which supported the credibility of the Appellant's claim throughout the expert's report not in the sense that she found her credible, but she found her account consistent with information due to her expertise. There was a long list of such findings. The first was that the country expert stated that it was plausible that she would not have details of her parent's membership at 18. The arrest on the basis of a report by members of public was considered to be consistent at 20-23 of the report and at 88. The country expert considered it to be consistent at 27-29 and 90 and plausible that father's land was confiscated as there was extensive documentary evidence of land occupation 82. The country expert stated that her account of a group member of pro OLF group in Yemen being arrested was consistent with background evidence at paragraphs 42 to 94 of her report. The expert also found it consistent that the Appellant would have joined a pro OLF group in Yemen that OLF refugees group together. The Judge had no regard to the photographs provided by the Appellant on 21 May, Oct 2016 and Oct 2017 in terms of how this corroborated her credibility. The You-tube screenshots were not taken into account, and no regard was had to a letter from the Secretary of the Oromo Community confirming her status as an OLF supporter. The Tribunal needed to consider an appeal in the context of evidence as a whole including credibility. The Judge's failure to take account of relevant factors corroborating her account amounted to an error of law.
13. Ground 4 was that the Judge gave no adequate reasons given for placing weight on photos. At paragraph 38 the Appellant provided photos and screenshots on the basis that they were outside Downing Street. The complaint was being made to the British Government but the complaint was about the Ethiopian Government, pleading with the British Government to oppose the action of the Ethiopian state. The Judge placed too much weight on the location of protest and did not placed sufficient weight on the perception of the authorities regarding the perception of risk.
14. Ground 5 was that the Judge erred in failing to have regard to documentary evidence and failing to give adequate reasons for rejecting this evidence. The Appellant provided letter dated 3 Feb 2018 showing that infiltrators could take pictures. The Appellant relied on the document to show sur place activities would come to the attention of the authorities

through surveillance. He acknowledged receipt at paragraph 12 of the decision but not when assessing risk on the basis of surveillance. He stated that she had failed to provide documentary evidence. Moreover, the Judge placed little weight on screenshots on the basis that it was viewed 97 times which was irrational because it did not follow that one of these viewers was not an informant. The recording of this on Youtube placed her at an enhanced risk. It was irrational to conclude otherwise. On any view this was a significant amount of viewers and it was not possible to discount the possibility that they were informants.

15. In relation to Ground 6, Ms Zapato Besso argued that the Judge failed to consider adequately whether as a supporter in fact she would be required to dissimulate on return. The Appellant was at risk both the basis of her own activities but also on **HJ (Iran) & HT (Cameroon)** [2010] UKSC 31 grounds. Her actual opinion was pro OLF and she could not be returned because she would continue to manifest this support. The Judge did not address this point at all. It was submitted that the errors of law did not apply in respect of 20 to 23 where she was found to be of Oromo ethnicity. Those findings should be maintained.
16. Mr Howells submitted in respect of Ground 1, in relation to the question of whether the Judge should have placed weight on a material discrepancy as to whether the Appellant had been a supporter or member in Ethiopia, the Appellant had given inconsistent evidence. In her screening interview and significantly at the hearing she claimed to have been a supporter of the OLF. The discrepancy arose from what she said at her asylum interview. At question 131 -5 she referred to a card and she was asked and said she was a member. Significantly her then representatives wrote with a large number of corrections and she did not correct her answer to 131. She corrected her answer to 122 and 128 not 131. There was a material discrepancy at the core of her claim to have been involved with the OLF in Ethiopia and it was open to the Judge to find that this discrepancy undermined the materiality of the account.
17. In relation to Ground 2 which related to paragraph 32 of the determination, the Respondent accepted that the Appellant's explanation at paragraph 13 of her witness that she met her aunt in Addis Ababa and was informed of her parent's arrest was not incompatible with her answers in the screening interview. That still meant she had given two versions; one that she was told in Yemen and the other in Ethiopia and that was another material discrepancy and it was open to the Judge to find that this undermined her credibility. Ground 2 also asserted that the Judge's finding at paragraph 36 about the plausibility of aunt allowing her to return was contrary to the expert evidence. That may be the case but this was not the only reason why the Judge did not accept that the Appellant's account about the arrest of her parents was untrue. There was a material discrepancy as to where she was when she learnt of the arrest.
18. In relation to Ground 3, the Judge made findings on whether the Appellant was a member of the OLF, whether her parents had been arrested and her sur place activity. The adverse credibility findings were open to him. The

expert report went to plausibility. The expert was not entitled to comment on credibility. The Judge identified material inconsistencies.

19. In respect of Ground 4 the Judge was mindful of the photographs which were adduced and that was clear from paragraphs 39 and 40. Having considered those photographs, he said that she was a face in a crowd and unlikely to be identified. With regard to the YouTube extract, this went to Ground 5 also, whether there was evidence that the Ethiopian authorities conducted surveillance, reliance in the grounds was placed on the letter of the Secretary dated 3 February 18. At page 2 the Secretary of the Oromo Community stated that it was suspected that infiltrators assigned by the Ethiopian government through their embassies could disguise themselves and take pictures. He submitted that the use of the “suspect” could indicate that it was speculative and not based on any firm evidence and therefore although the Judge did not mention this the omission was not material.
20. With regard to Ground 6 it was unclear whether the **HJ** point was made and it was not clear from her statement that she intended to continue with political activities on return. There was no skeleton argument before the First-tier Tribunal and no **HJ** argument made. There were no material errors of law in the decision.
21. Ms Zaptato Besso said that for the avoidance of doubt in respect of Ground 4, the Judge said he was not satisfied that she would be more than a face in the crowd and pro OLF and this issue went both to risk and credibility of her status or belief as an OLF supporter.
22. Both representatives agreed that the appeal should be remitted to First-tier if an error of law was found.

Discussion

23. I have firstly considered the grounds in respect of which permission was granted and then I subsequently deal with the grounds and submissions advanced at the hearing. Permission was chiefly granted on the basis of the Judge’s approach to the issue of the activities of the Ethiopian government outside Ethiopia. At paragraph 40 of the decision the Judge noted that the Appellant had produced no independent documentary evidence and that he had not been referred to independent documentary evidence that the Ethiopian government investigate or scours the worldwide social media in order to identify or pursue those who demonstrate in the UK or indeed in any other country outside Ethiopian against the actions of the Ethiopian government. Although permission was granted on this ground I have not been referred to any background evidence which the Judge should have and did not take into account in relation to the ability of the Ethiopian government to identify those who are active on social media or demonstrate in the UK. I note that in the letter of 6 February 2018 from Duncan Lewis solicitors they list the questions which are to be posed of the expert in this case, Claire Beston. One of those questions is: “What do you consider would happen to her if

she were to return to Ethiopia as a family member of an OLF family that has come to the attention of the authorities and in addition as an OLF supporter in Yemen and in the UK?”. The expert’s report is at pages 11 to 32 of the Appellant’s bundle and does not set out the questions that she was asked to address. However, one of the subheadings is risk on return and nowhere in the expert report is there a reference to risk arising as a result of taking part in demonstrations in the UK.

24. I have been referred to a letter dated 3 February 2018 from the Oromo community which states:

“We suspect that infiltrators assigned by the Ethiopian government through its embassies could disguise themselves and record voices and take pictures of people attending Oromo meetings and report them to the government. This is a risk for those who involve in all Oromo activities here in the UK if they were to be returned to Ethiopia among whom (the Appellant) could be one. “

25. The Judge refers to this letter at paragraph 37 and 38 of the decision and therefore clearly had it in mind. It was not independent documentary evidence, however, and the Judge was entitled to find, at paragraph 40 that no such evidence had been produced. His finding, therefore that there was no supporting documentary evidence to which he had been referred that confirmed that the oppressive activities of the Ethiopian government were extended outside Ethiopia is unimpeachable.

26. The Appellant now impugns the Judge’s findings in relation to her membership of OLF. The Judge deals with this question at paragraph 24 to 31 of the decision. It is asserted on her behalf that the Judge placed too much weight on inconsistencies in relation to whether she was a member or a supporter. At paragraph 4.2 of the screening interview the Appellant stated she was a member of the OLF and when asked at questions 96 and 97 of her substantive interview whether she had been a member of the OLF appears to confirm that that was the case. It is correct to say however, that she does not specifically say herself at that point in her asylum interview that she was a member but answers questions in relation to her membership. Significantly, however, in answers to question 125 and 126 of her interview she described the formal process of becoming a member and specifically stated that she became a member herself and indeed was registered as a member. She also described her ID card and the details on her ID card. At paragraph 6 of her witness statement for the purposes of the hearing she stated she was a supporter. The Judge was entitled to take account of the fact that there was an inconsistency in her evidence. He was entitled also to take account of the fact that he was assisted throughout her asylum interview by an interpreter, that the Appellant’s solicitors wrote to the Respondent after her interview but did not clarify this point, and that her oral evidence completely contradicted her claim to be a member in her asylum interview because in cross-examination she said she was only a supporter. The Judge evaluated all of the evidence, took account of her explanations, and was entitled to find that on this important and central aspect of her account she had given inconsistent and contradictory evidence.

27. The Appellant argues that the Judge placed too much weight on a discrepancy as between her screening interview, witness statement and asylum interview in relation to when and where she was when her aunt informed her that her parents had been arrested. I agree that there were two inconsistencies rather than three because the evidence provided in her screening interview is consistent with the evidence she provided at paragraph 13 of her witness statement that she was informed by her aunt at Addis Ababa airport that her family had been arrested because they were OLF members. The Judge set out all of the evidence and the Appellant explanations at paragraphs 32 to 36 of the decision. It is incontrovertible that the Appellant clearly stated in answer to questions 78 and 91 of her asylum interview that she called her aunt prior to returning to Ethiopia when she was in Yemen and that she returned to Ethiopia with the knowledge that her parents had been arrested. It is also incontrovertible that at paragraph 13 of her witness statement she states that her aunt informed her of her parents arrest on her arrival at Addis Ababa airport. The Judge was therefore entitled to conclude that this was a material inconsistency having heard and rejected her explanation.
28. The Appellant also criticises the Judge's adverse credibility finding at paragraph 36 of the decision in which he concludes it is implausible that the Appellant's aunt would have allowed her to return to Ethiopia as a close relative of arrested and detailed OLF member because this would have jeopardised her safety. It is the Appellant's case that in coming to this conclusion the Judge failed to take adequate account of the expert's report. What the expert says at paragraphs 30, 50 and 91 of the report is that it is not implausible that a person who was under suspicion would have been able to exit and enter the country because harassment, threats and periods of arbitrary detention were intended to serve as a warning. However, this was not the basis for the Judge's adverse credibility finding he did not find that it was implausible that the Appellant would be able to exit and enter but rather that it was implausible that her aunt would have allowed her to do so knowing the risk. He was entitled to come to this conclusion which was adequately reasoned.
29. The Appellant also argues that the Judge placed insufficient weight on positive credibility factors. It is asserted that he failed to have any regard to the independent objective evidence in the form of the expert's report in assessing the claim of the Appellant to be pro OLF. It is clear from reading the judgement as a whole that the Judge was fully cognizant of the contents of the expert's report and indeed accepted the conclusions in relation to the Appellant's Oromo ethnicity which had been disputed by the Respondent. However, he rejected her account of her membership of the OLF and her claim that her parents had been arrested on the basis of material inconsistencies in her account and he gave adequate reasons for finding that the Appellant had not explained these inconsistencies. He applied the correct standard of proof and was entitled to come to the conclusions he did on the evidence before him.

30. The grounds further assert that insufficient regard was had to photographic documentary evidence, her activities in the UK, and the risk arising out of her place activities. It is said that her social media activities placed her at an enhanced risk. However, the Judge took full account of the evidence produced by the Appellant in relation to these activities from paragraphs 37 to 40 of the decision. His conclusion that these activities would not put the Appellant at risk on return was open to him in view of the absence of supporting independent documentary evidence that the Ethiopian government had the inclination or ability to identify individuals who engage in such activities abroad.
31. It has also been argued that the Judge failed to consider that the Appellant would seek to manifest her beliefs on return and consequently be at risk. However, there is no suggestion in the Appellant's witness statement or the evidence on the court file that the Appellant had ever claimed that she would manifest her views on return. This was also not a matter addressed by the expert and there was no skeleton argument before the judge asserting that this is a matter that he should have considered. In the circumstances he cannot be criticised for failing to consider something he was not asked to consider.
32. I conclude therefore that there was no error of law in the decision of the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal does not contain a material error of law and I do not set it aside.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 15 October 2018



Deputy Upper Tribunal Judge L J Murray