



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01876/2016

THE IMMIGRATION ACTS

**Heard at Manchester
On 16th April 2019**

**Decision & Reasons
Promulgated
On 24th May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR S M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Schwenk, Counsel

For the Respondent: Mr Tan, Home Office Presenting Officer

DECISION AND REASONS

1. This matter has a lengthy history and previously last came before the Upper Tribunal sitting at Liverpool on 22nd February 2018 when Deputy Upper Tribunal Judge O’Ryan on hearing an appeal against the decision of First-tier Tribunal Judge Lloyd dated 23rd May 2017 found that the judge’s decision involved the making of the material error of law and gave directions for the continuation of the matter.
2. It is relevant to note that the Appellant is a national of Ethiopia and is of Oromo ethnic origin. He had previously given an account of having come

to the adverse attention of the Ethiopian authorities. The first occasion being in 2008 when the Appellant asserted that he had attended an OLF demonstration and had been arrested and detained for two months. The second occasion had been in 2014 when he attended a further demonstration and had been recognised by local police. The Appellant had asserted that he hid in a relative's house for fifteen days before leaving Ethiopia in May 2014 and thereafter the Appellant spent time in other countries before arriving in the UK in October 2015. Following his claim for asylum his application was refused by Notice of Refusal dated 9th February 2016.

3. The appeal was heard on 12th May 2017 and the Appellant gave oral evidence and relied upon certain photographic evidence of his having attended demonstrations in the United Kingdom in support of the Oromo cause. The First-tier Tribunal Judge dismissed the appeal finding that the Appellant's account of his activities for the OLF and having come to the adverse attention of the Ethiopian authorities was untrue.
4. Having been granted permission to appeal the hearing as to whether there was a material error of law in the decision of the First-tier Tribunal Judge came as stated above before Deputy Upper Tribunal Judge O'Ryan. Judge O'Ryan in a very lengthy error of law set aside the judge's decision and ruled that the matter did not need to be remitted to the First-tier Tribunal. However before remaking the decision he indicated that further findings needed to be made/further documentary evidence required in relation to the following issues
 - (i) has the Appellant in fact been photographed at public demonstrations with the person's he alleges? Evidence as to the identity of such persons, and their political profile, would be of assistance.
 - (ii) Has there, in fact, been any material published online regarding the Appellant's activities?
 - (iii) Is there any further evidence as to the Ethiopian authorities' current practice of direct monitoring of political activities in the diaspora, in the UK in particular?
5. Having heard the submissions and made such findings it was incumbent that the appeal be brought back before Deputy Upper Tribunal Judge O'Ryan. His decision finding a material error of law dates from 26th June 2018. For reasons totally unknown to me and to the advocates attending before me this matter has been listed before me and not Judge O'Ryan. However I am advised that it is now some nine months since the error of law hearing and I am urged by both legal representatives not to adjourn it. I consequently agreed to rehear the matter but in doing so I asked the parties, and in particular Mr Schwenk, to take me through the findings of the First-tier Tribunal Judge and the basis upon which Judge O'Ryan set aside the decision so that I am at least up to speed in being able to understand the position that we have reached and to answer the

outstanding questions which need to be addressed before the decision could be remade.

6. It is on that basis that this appeal now proceeds. The Appellant appears by his instructed Counsel Mr Schwenk. Mr Schwenk is extremely familiar with this matter. He has appeared previously and he is also the author of a most helpful skeleton argument. The Secretary of State appears by her Home Office Presenting Officer Mr Tan. Judge O’Ryan granted the Appellant anonymity. No application is made to vary that order and none is made and the anonymity direction will remain in place.

The Evidence And The Issues

7. I am advised that there are two bundles of evidence, the original consolidated bundle and a supplemental bundle and in addition I am drawn to the Appellant’s skeleton argument dated 22nd January 2019. The issue that I have to address centre very much on the sur place activities engaged in by the Appellant and thereafter having made findings on that point to make an assessment of the Appellant’s risk on return.

Evidence

8. The Appellant attended and gave oral testimony. He confirmed and adopted his previous witness statements. Mr Schwenk took him through photographs that had been produced in particular photographs which were identified of being of Dr Bersisa Berri who I understand is the leader of the OMF in the UK. The Appellant gave evidence that the photograph of him taken with Dr Berri was at a fundraising event in Bolton.
9. The Appellant was cross-examined by Mr Tan. Mr Tan took the Appellant to a letter dated 1st October 2016 from Dr Berri in support of the Appellant’s application for asylum. The Appellant advised that he obtained the letter having since arriving in the UK following participating in community events and attended demonstrations and meetings and consequently continued to give support. He advises that he approach Dr Berri and asked him to produce it. There are of course produced to me two letters and whilst they are very similar in nature there is some minor discrepancies within them with regard to the Appellant having purportedly been arrested attending a demonstration in 2014. It is the Appellant’s response to Mr Tan that he too spotted the discrepancy and that the second letter was written following his request that Dr Berri amends the letter so as a correct and accurate picture is produced. He advises that all requests for this were done by telephone. Further the appellant in evidence complains photographs taken with Mr Safiri who is the chair of the OMF.
10. Thereafter the Appellant gave evidence with regard to information provided in his second witness statement with regard to his ID card and by his brother. I did point out at this stage in the cross-examination that I was not rehearing the whole case but that this was a continuation.

Evidence was given by way of explanation as to the differing dates on the ID card compared to the Appellant's testimony as to when he left Ethiopia. His evidence was that the date on the ID card was wrong and that he definitely left in May 2014. He further emphasised that he only relied on the ID card in order to prove his identity.

11. Mr Tan turned to the issue with regard to any difficulties the Appellant may experience on return and the contention that the Oromo broadcasting network is no longer banned in Ethiopia. The Appellant advises that whilst the network may not be banned any suggestion that there be a studio or office for the organisation is and that he does not accept Mr Tan's submission that the OLF is no longer "a banned organisation."
12. The Appellant had a witness Mr F W who gave evidence on his behalf and confirmed his witness statement of 11th October 2016. Mr F W confirmed that the picture produced in the photograph was one of Dr Berri and that it was taken at a demonstration. The Appellant's witness advised that he had been granted refugee status in May 2016 and that he had not returned to Ethiopia. Mr Tan in cross-examination enquired of the witness as to whether anyone he knew had returned to Ethiopia and the witness indicated that so far as he was aware no one had and in his belief it is not true to say that the OLF is no longer banned particularly bearing in mind that its leaders remain detained.

Submissions

13. Mr Tan relied on the credibility findings of Mr O'Ryan and that these are reinforced by the discrepancies noted in the Appellant's ID card. He further contends that the inconsistency of the content of the letters of Dr Berri do not assist the Appellant's case and that no credible explanation to the inconsistencies have been provided. He points out that the directions of Judge O'Ryan indicated that any other documents that were appropriate should be produced but that the only evidence that has been produced is that of the Appellant and the witness and that the Tribunal should view the risk on return in the current situation context. He submits that no evidence has been given to show that there is a change in the Ethiopian authorities to show that they would have any interest in the Appellant as a member of the OLF and that since Spring 2018 there has been an Oromo Prime Minister elected, that there has been a lifting of the ban on the OLF and that this has also been covered in the foreign policy of the country culminating in peace with Eritrea. He submits that none of the factors that were relevant in the country guidance authority of *MB (Ethiopia) [2007] CG UKAIT 00300* are now applicable.
14. However he notes that the Appellant still contends that he would be at risk. He refers me to the expert's report of Dr Trueman 2017 and to the evidence provided by the Appellant in his interviews which show that he has not been harassed in the manner that his brother was. He submits that there is no evidence that the authorities would have any interest in him or his family despite his sur place activities and therefore he submits

he would not be at risk on return. He contends that the arrest made at demonstrations were due more to violence rather than being members of the OLF. He re-emphasises that Ethiopia has changed substantially and that even if *MB* were to be held to be good law he is someone who has no issues in Ethiopia and would not be at risk.

15. Mr Schwenk takes me to his skeleton argument and submits firstly that it is appropriate to apply country guidance and that it is appropriate if it is to be disapplied that there are strong grounds produced along with supporting evidence that there has been a durable change. He submits that there has been nothing produced by the Secretary of State merely a reference to an article which actually assists the Appellant. He submits that there is insufficient evidence for me to depart from country guidance and that in fact to do so without good reason would be an error of law.
16. I note the BBC article to be found at page 38 of the supplementary bundle submitting that any change that has taken place is not durable and consequently it is appropriate to follow *MB (Ethiopia)*. Further he submits that there has not been a lot of challenge to the sur place activities of the Appellant by the Secretary of State and consequently the question is will he be at risk on return. He submits that he will be and that the Appellant has been accepted as having been at the front of demonstrations, held banners and seen in company of prominent people. He submits he meets the relatively low standard of proof and the core of his account is that he is an active opponent of the regime who has been seen in the company of activists and consequently following country guidance he is at risk on return. He asked me to allow the appeal.

Country Guidance

17. The Appellant relies on **MB (Ethiopia) [2007] CG UKAIT 00300**. The headnote states

“(1) As at February 2007, the situation in Ethiopia is such that, in general:-

- (a) Oromo Liberation Front members and sympathisers;*
- (b) persons perceived to be OLF members or sympathisers;*
and
- (c) members of the Maccaa Tulema Association;*

will, on return, be at real risk if they fall within the scope of paragraph (2) or (3) below.

- (2) OLF members and sympathisers and those specifically perceived by the authorities to be such members or sympathisers will in general be at real risk if they have been previously arrested or detained on suspicion of OLF involvement. So too will those who have a significant history, known to the authorities, of OLF membership or sympathy. Whether any such persons are to be excluded*

from recognition as refugees or from the grant of humanitarian protection by reason of armed activities may need to be addressed in particular cases.”

Findings

18. I start by reminding myself the position in which this case had reached. I am not holding a complete rehearing of this matter. This is merely a continuance. The starting point I turn to the additional questions that Judge O’Ryan considered necessary to be answered.
 - (1) Has the Appellant in fact been photographed at public demonstrations with the persons he alleges?
 - (2) The answer to this question is yes he has and reasons have been given for the photographs and I make a finding that the photographs are genuine and that the Appellant has been photographed in the company of Dr Berri and Mr Safiri.
19. Secondly, the question was has there in fact been any material published online regarding the Appellant’s UK activities. I am referred to the supplementary bundle, extracts from YouTube videos showing the Appellant at demonstrations are produced therein along with a verbal message expressed on behalf of Oromo youth. Those materials are unchallenged. I accept the submissions made by Mr Schwenk that additional evidence has been provided.
20. Finally the question is is there any further evidence as to the Ethiopian authorities current practise of direct monitoring of political activities in the diaspora, in the UK in particular? This is addressed by Mr Schwenk in his skeleton argument. Whilst I accept that there has been a change in leadership in Ethiopia and a change of foreign policy there is nothing to produce to me to show that the background evidence which demonstrates to the standard of a reasonable likelihood that the Appellant’s activities are likely to have come to the attention of the Ethiopian authorities no longer exists.
21. Consequently I am satisfied that all the questions posed by Judge O’Ryan are answered in the affirmative and that the submission made by Mr Schwenk that the Appellant’s core account that he is an active opponent of the regime who has been seen in company of activists is backed up by evidence which has been produced to the Tribunal to show that the Appellant meets the relatively low standard of proof. As a result there being no evidence to the contrary the view expressed in *MB (Ethiopia)* particularly at headnote number two as an OLF member and sympathiser would mean the Appellant would be perceived by the authorities to be a member and sympathiser who will in general be at real risk. The Appellant produces evidence of being sympathetic to the OLF cause. I am satisfied that to the lower standard of proof the Appellant has produced evidence that is supportive of these findings.

22. These were the only issues extant before Judge O’Ryan but it has been necessary to consider a full evaluation of the evidence previously reached and maintained and marrying the two together I am satisfied that this is an Appellant who is at its lowest level a sympathiser of the OLF, that he has been involved in sur place activities and that he has been seen in photographs and videos which would identify him as a sympathiser. To that extent I am satisfied that he would be seen as an active opponent of the regime and pursuant to the guidance given in *MB (Ethiopia)* he would be at risk on return. For all the above reasons the Appellant’s appeal is allowed.

Notice of Decision

The Appellant’s appeal is allowed on asylum grounds and pursuant to Articles 2 and 3 of the European Convention of Human Rights.

The Appellant was previously granted anonymity by the Deputy Upper Tribunal Judge at the hearing of the error of law. No application is made to vary that order and none is made.

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 him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 23 May 2019

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT FEE AWARD

No application is made for a fee award and none is made

Signed

Date: 24 May 2019

Deputy Upper Tribunal Judge D N Harris