Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07785/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 17 March 2020	**On 28 April 2020**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

M H B
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Adejumobi, IAS (Manchester)
For the Respondent: Mrs R Pettersen, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of Judge of the First-tier Tribunal Birrell ('the Judge') sent to the parties on 3 October 2019, by which the appellant's appeal against the decision of the respondent to refuse to grant him international protection was dismissed.

2. Upper Tribunal Judge Sheridan granted permission to appeal on all grounds.

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Anonymity

3. The Judge did not issue an anonymity direction even though this is a matter in which the appellant has sought international protection.

4. I am mindful of Guidance Note 2013 No 1 concerning anonymity directions and I note that the starting point for consideration of anonymity directions in this chamber of the Upper Tribunal, as in all courts and tribunals, is open justice. However, I observe paragraph 13 of the Guidance Note where it is confirmed that it is the present practice of both the First-tier Tribunal and this Tribunal that an anonymity direction is made in all appeals raising asylum or other international protection claims. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an anonymity direction in order to avoid the likelihood of serious harm arising to the appellant from the contents of his protection claim becoming known to the wider public.

5. The direction is detailed at the conclusion of this decision.

Background

6. The appellant is a national of Ethiopia who is presently age 20. He is ethnically Oromo. He states that his father was accused of being a member of the Oromo Liberation Front ('the OLF') and died before the appellant was born. The appellant details that he was introduced to the OLF by a friend and became active with the movement in or around 2014, initially handing out leaflets before rallies. He was arrested at a rally in April 2014 and accused of acting on behalf of the OLF. He was subsequently released by the authorities on condition that he attend no more protests. He attended a rally three days later. In February 2015 he was arrested on his way home, having been handing out leaflets. He was detained for several months and during this time he turned 16. He was released following the payment of a bribe by his family and was required to leave the country immediately as the persons involved in taking the bribe did not want their corrupt practices to come to light.

7. The appellant left Ethiopia in September 2015 and travelled to Germany where he stayed for a year and then spent three months in France. He arrived in the United Kingdom on 14 August 2017 and claimed asylum. The respondent refused the asylum application by a decision dated 31 July 2019.

Hearing Before the FTT

8. The appeal came before the Judge sitting in Manchester on 27 September 2019. At the beginning of the hearing, consequent to the Judge having admitted the late filing by the respondent of a short news article authored by Al-Jazeera, Mr Adejumobi sought an adjournment on behalf of the appellant, which was considered by the Judge at [5]-[6] of her decision:

'5. At the start of the hearing there was an application on behalf of the respondent to admit late evidence, which was not filed in accordance with directions, specifically an article from Al Jazeera dated 15 September 2018 and which is headed 'Thousands of Ethiopians hail return of once banned Oromo group.' This article expands upon the information contained within the most up to date COIS report regarding the opposition in Ethiopia, 'Ethiopia: Opposition to the government' version 3.0 (August 2019). I agreed to consider the evidence as it was of potential importance to the appeal and factually represented the most up to factual date position in relation to the legal status of the OLF whether Mr Adejumobi was aware of it or not.

6. As a result of my decision Mr Adejumobi applied for an adjournment on the ground that he had not been aware that in July 2018, the Ethiopian government removed the June 2011 designation as terrorist organisations for 3 armed opposition groups including the Oromo Liberation Front (OLF). He had relied entirely on the contents of the refusal letter which was based on a 2017 COIS and therefore was not based on the OLF being a legal party. He applied for the opportunity to obtain an expert report to show that the appellant was still at risk.'

9. The Judge considered the application under rule 4(3) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and observed the guidance provided by this Tribunal in *Nwaigwe (adjournment; fairness)* [2014] UKUT 00418 (IAC). The Judge refused the application in the following terms:

'11. I refused the application and gave brief oral reasons which I expand and explain below.

(a) The core issue in this case as set out in the refusal letter was whether the appellant had demonstrated that he was a supporter of the OLF and had been detained on two occasions as being a supporter alone was not enough by reference to the headnote MB (OLF and MTA – risk) Ethiopia CG [2007] UKAIT 00030.

(b) The information that the OLF was no longer an illegal party had been in the public domain for some time and had been in the COIS report available prior to the date of the hearing. This change in the legal position of the OLF requires a more nuanced approach to the assessment of risk as it is not determinative of the appeal and this is recognised in the COIS at 2.4.11 where it states: *'Ethiopia is transitioning through a period of significant and fundamental reform. The onus is on the person to demonstrate that, based on their profile, political activities, past experiences including any arrests (and the timing of those arrests), they will be at risk of persecution or serious harm on return. Each case must be considered on its own facts.'*

(c) Mr Adejumobi had the opportunity in preparing this case to consult the most up to date material and it was always open to him to obtain an expert report to show that his client was not simply a low level

supporter without more but someone whose history brought him within the risk category set out at headnote (2) of MB and indeed by reference to the most up to date COIS would put him at risk.

(d) He also has the opportunity to include background material in his bundle that may have alerted him that there had been a change in the circumstances in Ethiopia since the CG decision was promulgated. There is no background material relied on in his bundle.

(e) He also had the opportunity to take instruction from his client whose case it was that he was at risk on return and was of ongoing interest although the appellant was aware that the OLF was no longer an illegal party but apparently chose not to share that information with his legal representative.

(f) The appellant has never been deprived of the opportunity for a fair hearing.'

10. Having considered the evidence before her, including the appellant's evidence and objective country material, the Judge accepted at [49] of her decision that the appellant was a supporter of the OLF in Ethiopia having demonstrated sufficient knowledge of the history, aims and organisation of the movement to meet the evidential burden.

11. The Judge found the appellant to be incredible as to his detention and as to his stated fear of persecution at the hands of the Ethiopian authorities:

'52. In assessing his general credibility, I am entitled to take into account his immigration history and I find that this significantly undermines his credibility. While the appellant appears to have claimed asylum in both Italy and Germany, he did not await the outcome of the process in either country. However more significantly the appellant accepts that he gave a false date of birth both in the UK and in other countries (AI 266) in order to be dealt with as a minor and he did this on the advice of the agent. I find therefore that he knowingly sought to secure an immigration advantage both in the UK and in other European countries by presenting a false picture of himself and such dishonest behaviour undermines his general credibility.

53. The appellant asserts that he is not only a supporter of the OLF but that he was detained twice. However, I find that the credibility of this claim is not only undermined by his general credibility and his failure to give Mr Belay the opportunity to verify this aspect of his claim but by inconsistencies in his account. Of particular concern is that in explaining why he could not return at 4.1 of his [asylum interview] the appellant only refers to one detention, the one in 2015 and makes no reference to the other claimed detention he now relies on. I find therefore that the appellant has embellished his claim by suggesting that he was detained on two occasions.

54. I also find the appellant's general credibility is undermined by his failure, given his claim that he is an active and committed supporter of the OLF, to

mention either in his [asylum interview] which took place on July 2019 or in his witness statement which was made on 12 September 2019 that the OLF is now legal in Ethiopia. He asserted when asked by me that he knew that the OLF was no longer illegal but had been asked to focus on what was said in the refusal letter and that did not mention this. I found his response to be disingenuous as clearly the change in the party's status had the potential to affect the risk he claimed he faced. Moreover it was in fact put to the appellant in the [asylum interview] at Q243 that the President was an Oromo (an error it is the PM) so the appellant had the opportunity to specifically address the changing circumstances in Ethiopia and was either unaware of this or chose not to address the issue fully and openly.

55. Looking therefore at the appellant's evidence in the round and taking into account my findings as to his general credibility while I accept that the appellant was and continues to be a supporter of the OLF I do not accept that he has given a credible account of being detained twice in Ethiopia. As a supporter only I am satisfied that the appellant did not come within the risk factors set out in MB as I am satisfied that he was never come to the attention of the authorities.'

12. The Judge considered the matter in the alternative, noting the country guidance of *MB (OLF and MTA – risk) Ethiopia CG* [2007] UKAIT 00030 and determined at [56] that there has been a sufficiently significant change in country circumstances so as to establish that if a detention and release on payment of a bribe were accepted the appellant would not be at risk on return. Reliance was placed upon the OLF having been permitted to be a lawful political party, the release of Oromo political prisoners and that the 'President of Ethiopia' is ethnic Oromo. I observe this reference relates to the Prime Minister of Ethiopia, Abiy Ahmed, appointed in 2018 and who is of mixed Oromo and Amhara heritage.

Grounds of Appeal

13. The grounds of appeal filed on behalf of the appellant are poorly drafted. They do not have a heading deigning to name the appellant or provide the relevant appeal number. They run to 21 paragraphs with no attempt to identify with the requisite particularity the individual ground or grounds underpinning the challenge. The contents of these grounds are not on occasion easy to decipher. As observed by the Tribunal in *Nixon (permission to appeal: grounds)* [2014] UKUT 00368 (IAC), it is axiomatic that grounds of appeal to the Upper Tribunal should identify, clearly, and with all the necessary particulars, the error/s of law contended as arising in a decision.

14. Following discussion with Mr Adejumobi the primary challenge within the grounds is the refusal of the adjournment application, as detailed at paragraphs 3-4, 6-9, 10-12, which I detail below:

'3. At the hearing, the Presenting Officer accessed the COIS report (dated August 2019) in court and made, as part of his submissions, the fact that the 'article

expands upon the information contained within the most up to date COIS report regarding the opposition in Ethiopia: Opposition to the government Version 3.0 August 2019' paragraph 5 of the decision.

4. The COIS Report was not provided to the court at the hearing by the Respondent. The application made by the PO was only about the Article.

…

6. The application made by the respondent was in relation to a specific evidence – copy attached – referred to by the Judge in paragraph 5 of the decision, not the COIS report, which was, in any event, not provided to the court. The application made by the PO was not about the COIS report.

7. The Judge stated that she *'agreed to consider* <u>*the evidence*</u> *as it was of potential importance to the appeal …* <u>*whether Mr Adejumobi was aware of it or not'*</u> Paragraph 5 of the decision.

8. It is to be assumed that the Judge was referring to the Article dated 15 September 2018 by 'the evidence' as the application made was in relation to a specific evidence – the Article. The Judge has however gone beyond the Article and quoted from extracts in the COIS report which was not provided to the court.

...

10. The Judge stated that she agreed to consider the evidence 'whether Mr Adejumobi was aware of it or not'. The Judge failed to consider the fact that the Article was dated 15 September 2018 and therefore pre-dated the Respondent's Refusal Letter dated 31 July 2019 and despite this, the Respondent chose not to refuse to it in the Refusal Letter or, at least, give it as a reason for refusal, the fact that 'the legal status of the OLF' had changed in Ethiopia.

11. The judge's decision to reject the appellant's adjournment request offends the basic principle of fairness as her decision to agree to consider the evidence must also have been taken regardless of whether the Respondent was aware of it or not at the time date of the Refusal Letter. As the Respondent did not (or chose not to) refer to the evidence in their refusal letter and the Judge considered that 'it was of potential significance to the appeal', the Judge should have given the appellant the opportunity, by granting the adjournment request, to deal with that evidence especially as the respondent was now seeking to rely on a ground of refusal not raised in the Refusal Letter which it could have done.

12. It is submitted that the Judge relying on extracts from the COIS which the appellant was never served with in the case, as reasons for her decision to dismiss the appellant's appeal, amounts to an error of law.'

15. The second identifiable ground is a wide challenge to the point in time that is relevant for the Tribunal's consideration of risk. The appellant contends that it is anchored at the date of the respondent's decision and is limited to the express consideration undertaken by the respondent:

> '14. It is submitted that Q243 AIR therefore makes it clear that the Respondent was aware of the changed legal status of the OLF Party in Ethiopia but chose not to make it an issue in the case or put it forward as a basis of its case in the Refusal Letter.'
>
> 15. We submit that the appellant can only meet the case put forward by the Respondent in the Refusal Letter. If, despite being aware of the change in the legal status of the OLF in Ethiopia, the Respondent chooses not to make that an issue in the case in the Refusal Letter, why should the appellant address it? The respondent could have at least served the appellant with the Article before the date of hearing but chose not do so. It was served on the appellant's legal representative in the court room – at the hearing. The appellant was ambushed by the respondent.'

16. A third ground is that identified at paragraphs 5 and 9 and is concerned with the Judge having read a document after the hearing. It is this ground that is expressly addressed by Upper Tribunal Judge Sheridan in his grant of permission:

> '5. The Judge has quoted parts of the COIS report in paragraphs 11(b), 45, 46 and 56 of the decision. The Judge must have accessed the COIS report after the hearing as the report itself was not submitted to the court by the Respondent. Please find attached a copy of the relevant pages of the COIS Report accessed by the Judge. A copy of the report was never served on the appellant.
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> …
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> 9. The Judge noted at paragraph 18 of the decision that 'although Mr Cullen now relied on the August 2019 COIS'. As we have already pointed out, the COIS was not submitted to the court by the respondent. The PO only referred to it his submissions in support of his application to the court to admit the Article. We should point out that the appellant was never served a copy of the COIS prior to, or at, the hearing.'

17. Confusingly, and a clear example of the poor preparation of the grounds of appeal, paragraph 13 of the grounds simply sets out [54] of the Judge's decision, without more. Paragraph 14 asserts that a reading of the interview record confirms that the respondent was aware of the change in country situation but chose not to 'make it an issue in the case'. This paragraph appears to be connected to the contention subsequently advanced at paragraph 15 of the grounds, rather than with the paragraph of the Judge's decision identified at paragraph 13, which is concerned with credibility and a failure by the appellant to address in his interview that the OLF is now a lawful political party. It proved difficult to ascertain from Mr Adejumobi as whether the simple reciting of a paragraph from the Judge's decision at paragraph 13, without more, was a ground of challenge in its own right or linked

to ground 2. During the course of submissions Mr. Adejumobi relied upon the appellant having addressed the change in political situation during his asylum interview, asserting that the Judge could not lawfully have found at [54] that he failed to mention it. I have proceeded to consider this issue as ground 4 and in the following terms: a reasons challenge to the finding at [54] that the appellant's general credibility is undermined by his failure to address recent changes in his asylum interview and witness statement.

18. In granting permission to appeal UTJ Sheridan reasoned, *inter alia*:

> 'It was arguably procedurally unfair for the judge to rely on evidence (the COIS report dated August 2019) that was not provided to the Tribunal by either party without giving the parties an opportunity to consider and make submissions on, that evidence.'

19. No Rule 24 response was filed by the respondent.

Decision on Error of Law

20. Before considering Mr. Adejumobi's submissions on behalf of the appellant it is appropriate to note several uncontested facts. Abiy Ahmed was sworn in as Ethiopia's Prime Minister in April 2018. Following his appointment, the Ethiopian Parliament lifted the ban on the OLF and in May 2018 the Oromia regional state pardoned over 7,600 prisoners, some of whom were political prisoners. In August 2018 a peace agreement was reached between the Ethiopian government and the OLF. Prime Minister Ahmed subsequently met former OLF leaders, including a founder member Lencho Letta who is now leader of the Oromo Democratic Front. The appellant refers to Mr Letta at Q164 of his interview. In February 2019 over 1,000 Oromo fighters laid down their weapons. The appellant was interviewed by the respondent as to his asylum claim on 1 July 2019 and a decision letter was issued on 31 July 2019. Consequent to this decision, the appellant appealed to the First-tier Tribunal and in the meantime the Home Office issued in August 2019 a CPIN entitled 'Ethiopia: Opposition to Government' version 3.

21. The respondent's decision can reasonably be criticised for not addressing the changes in Ethiopia's political landscape as to a peace agreement between the Government and the OLF, in part, it appears to me, because significant reliance was placed by the decision-maker up an out-of-date CPIN concerned with the Oromos dated November 2017.

22. I consider ground 4 first, as it can be addressed briefly. Mr Adejumobi observed that the appellant had addressed the 'unbanning' of the OLF, or at the very least in similar terms, in his asylum interview. I note that there is a brief reference to the OLF being 'banned at the time' at Q165 of the interview and recognition of the appointment of Prime Minister Ahmed at Q242, but much of the interview is concerned with the appellant's personal history. The appellant does not expressly address the peace process, nor does he seek to identify as to why he remains at real

risk of persecution following the establishment of the OLF as a lawful political party in Ethiopia. Indeed, as to the election of Prime Minister Ahmed in April 2018 the appellant pointedly remarked at Q243 that he was the chief of security for the previous regime, the same group remains in power and the election was '... for international consumption, not for basic individuals for myself ...' The Judge was lawfully entitled at [54] to observe that the appellant had failed to address key changes in Ethiopia that directly impacted upon his claim for international protection, either at his interview or in his witness statement. The appellant is simply unable to sustain a challenge to this element of the Judge's decision on reasons or perversity grounds.

23. As to ground 2, Mr Adejumobi was clearly exorcised before me by the failings of the respondent's decision letter the contents of which, he asserted, did not enable him or the appellant to be ready to address the current situation in Ethiopia before the Judge as it did not expressly address the change in country situation from the late spring of 2018 onwards.

24. During the course of the hearing, I sought to establish key issues with Mr. Adejumobi. He was insistent, on several occasions, that by the date of the hearing before the Judge he had previously represented several Oromo clients and so was well aware as to the change in the country situation. This contention sits ill at ease with both the record of proceedings and the Judge's decision which records the adjournment application, in part, being founded upon Mr. Adejumobi stating that he had been caught unawares as to the change in country situation, as noted at [6] of the decision. I am not required to decide Mr. Adejumobi's state of knowledge at the hearing because the fact that he was either aware of the change in the country situation as regards the OLF, or not, does not impact upon my consideration of the grounds of appeal before me. It is a neutral factor.

25. Mr Adejumobi addressed me, paragraph by paragraph, as to the relevant Al-Jazeera article and stated that nothing within it was unknown to him on the morning of the hearing before the Judge. This sits ill at ease with his contention at §15 of the grounds of appeal, which Mr Adejumobi confirmed to me at the hearing he had drafted, where he states that the appellant was 'ambushed' by the respondent's reliance upon this article.

26. During the course of his submissions, which lasted 55 minutes, Mr. Adejumobi continually referred back to paragraph 15 of the grounds of appeal, in particular:

> 'We submit that the appellant can only meet the case put forward by the Respondent in the Refusal Letter. If, despite being aware of the change in the legal status of the OLF in Ethiopia, the Respondent chooses not to make that an issue in the case in the Refusal Letter, why should the appellant address it?'

27. As the hearing progressed Mr. Adejumobi confirmed that this was the primary ground of appeal relied upon. He submitted that if the respondent wished to address issues known to her at the date of the decision, but not referred to, she was required

to file and serve an amended decision and could not rely upon materials adduced on the morning of the hearing. This was so even if, as Mr. Adejumobi contended before me, the appellant and representative were aware of relevant changes to the country situation at the date of the hearing. Mr. Adejumobi contended that fairness required that the respondent be tied to her decision letter and so the appellant was only required to address the issues raised within the letter. Consequently, a Judge could not admit documents addressing the up-to-date situation existing within a country without the respondent amending her decision letter prior to such application. He further submitted that in the context of this appeal, the Judge could not allow the respondent to rely upon the Al Jazeera article, or the updated COIS, despite the article being some 12 months old and the contents addressing facts known to him, because to permit the respondent to rely upon these documents was tantamount to permitting an ambush upon the appellant.

28. As observed above, the respondent's decision letter does lack the expected care as to detail expected in an examination of an application for international protection. There is a marked failure to consider the country situation existing as at the date of decision. However, Mr. Adejumobi's clear submission to me was that both he and his client were aware of the significant change in the Ethiopian government's approach to the OLF. The appellant's case, as advanced by Mr. Adejumobi, is encapsulated in paragraph 15 of the grounds detailed above.

29. I asked Mr. Adejumobi to address how his submission could be consistent with the seminal judgment on this issue, namely the Court of Appeal decision in *Ravichandran & Others v. Secretary of State for the Home Department* [1996] Imm AR 97. He did not engage with this judgment during his lengthy submissions, save for acknowledging its existence, and did not resile from his submission.

30. In *Ravichandran* the Court of Appeal was required to consider what it acknowledged to be an important question, namely the date at which the appellate authorities should assess the facts in asylum cases. On behalf of the appellants, the late Ian Macdonald QC sought to advance the proposition that appeals in asylum matters should be concerned with the factual situation existing at the date of decision. This submission was rejected by the Court of Appeal, with Simon Brown LJ stating, at [112]-[113]:

> 'With regard to immigration appeals generally (which, of course, are by no means restricted to primary purposes cases) there is no doubt whatever that appeals have to be dealt with on the basis of the factual situation existing at the time of the original decision against which the appeal is brought. That was established in 1982 in R v IAT ex parte Weerasuriya (1983) 1 AER 195 and R v IAT ex parte Kotecha (1983) 2 AER 289, and the rule has been applied in innumerable cases since. Does the reasoning in those cases apply equally, as Mr. Macdonald submits, to asylum appeals?
>
> Although I confess to finding this a difficult issue, I have concluded that the position is indeed different in asylum appeals. It is true that to a substantial

extent the reasoning in Weerasuriya and Kotecha relies as a matter of construction on the use of the past tense in section 19(1)(a)(i) and (ii) (and indeed in section 19(2)), but the court relied also upon other considerations which they found reinforced their construction of section 19, principally the nature of the appellate structure in immigration cases. As Webster, J. said in Weerasuriya in a passage then approved by the Court of Appeal in Kotecha:

> '... it is, as it seems to me, necessary to look at that appellate structure in order to ask oneself the question whether that appellate structure has to be regarded as an extension of the original administrative decision-making function or whether it is to be regarded as simply a process for enabling that decision to be reviewed. It seems to me it falls into the latter category rather than into the former category.'

I have reached the conclusion that in asylum cases the appellate structure as applied by the 1993 Act is to be regarded rather as an extension of the decision-making process. I am, I think, entitled to reach that conclusion as a matter of construction on the basis that the prospective nature of the question posed by section 8 of the 1993 Act over-rides the retrospective approach ordinarily required (implicitly) on a section 19 appeal. Section 8, after all, could, but does not, identify the ground of appeal as being that the appellant's removal "would have been" (rather than "would be") contrary to the United Kingdom's Convention obligations. Moreover, section 8(1) refers to a particular class of appeals and section 19 to appeals in general. It would be a strong thing to say that the general was to over-ride the particular.

When it comes to the policy considerations, moreover, there are clearly good reasons for adopting a different approach in asylum cases. Whereas all ordinary immigration cases are entirely specific to the individual applicant and ask simply whether he or she qualifies under the rules, in asylum cases are necessarily concerned at least in part with the situation prevailing in a particular foreign country. Not only the Secretary of State but also the special adjudicators build up a body of knowledge about that situation and it would be unfortunate indeed if they are bound to ignore all that they know to have happened after a given historical date, the date of the Secretary of State's refusal of asylum. The situation might have changed for the better or it might have changed for the worse. In either event, if the appellate authorities were bound to ignore such changes, it would render their decisions substantially less valuable. If the situation had improved but, because the appellate authorities had to ignore such improvement, the appeal succeeded, the Secretary of State might nevertheless, in reliance upon Article 1C(5) of the 1951 Convention refuse the appellant refugee status. Article 1C(5) provides that the Convention ceases to apply if:

> '(5) He (the refugee) can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to avail himself of the protection of the country of his nationality.'

Equally, had the situation deteriorated but, because this had to be ignored, the appeal failed, the claimant could put a fresh case to the Secretary of State. In either event, the appeal process could well have to start all over again. Lord Lane, C.J. in Kotecha concluded his judgment thus:

> '... were the submissions of counsel for the appellant to be accepted as correct [i.e. were the appellant authorities obliged to look at new developments] it would mean a never-ending system of appeal, each court up the line being obliged to review the facts in the light of events as they stood, not at the time of the original decision but as they stood at each stage of the appellate system, and the system would become even more unmanageable than some people believe it to be at present.'

In asylum cases, that does not seem to me to hold true. It follows that in my judgment this ground of appeal also fails.'

31. I observe that the decision in *Ravichandran* was approved by the Supreme Court in *TN (Afghanistan) v. Secretary of State for the Home Department* [2015] UKSC 40; [2015] 1 W.L.R. 3083, per Lord Toulson at [70] and [73]:

> 'In Ravichandran the court rightly held that on an asylum appeal the question is one of present status: does the appellant meet the criteria of the Refugee Convention or is he in need of humanitarian protection? …'
>
> ...
>
> 'I would hold that the Ravichandran principle applies on the hearing of asylum appeals without exception …'

32. I further observe that Mr. Adejumobi acknowledged that the Supreme Court had upheld the principle espoused in *Ravichandran* but did not resile from his reliance on paragraph 15 of his grounds to which he returned on numerous occasions during his lengthy submissions. He provided no true explanation as to why the *Ravichandran* principle was not applicable in this matter, save for his assertion that it was wholly unfair that the respondent could rely upon the present country situation when it was not addressed in the decision letter. I conclude that in seeking to advance a ground specifically rejected by the Court of Appeal and Supreme Court, the former having given seminal guidance some 25 years ago, and in advancing the argument with knowledge of these judgments, Mr. Adejumobi temporarily lost sight of his obligation to this Tribunal not to waste time and resources. There is no merit in this ground.

33. As to ground 1, the core paragraph of the grounds of appeal is paragraph 11:

> 'The judge's decision to reject the appellant's adjournment request offends the basic principle of fairness as her decision to agree to consider the evidence must also have been taken regardless of whether the Respondent was aware of it or not at the time date of the Refusal Letter. As the Respondent did not (or chose not to) refer to the evidence in their refusal letter and the Judge considered that 'it was of potential significance to the appeal', the Judge should have given the appellant the opportunity, by granting the adjournment request, to deal with that evidence especially as the respondent was now seeking to rely on a ground of refusal not raised in the Refusal Letter which it could have done.'

34. The appellant's case as to ground 1 developed markedly during the course of the hearing. The grounds of appeal suggest elsewhere that the appellant was 'ambushed' which strongly suggests being 'caught off guard' by new information. This initially appeared to be consistent with the Judge recording Mr Adejumobi's statement during his adjournment request that he was not aware of the relevant change in the political situation in Ethiopia as to the OLF. However, Mr Adejumobi confirmed to me that he had been aware of such change, but he was not required to address any issue that did not arise within the decision letter. Accepting that he was aware as to the developments in Ethiopia during the course of the previously year, the approach adopted by Mr. Adejumobi in not preparing the appellant's appeal to address the up-to-date situation is strongly suggestive of a basic, and worrying, failure to abide by the Ravichandran principle. It cannot be said to be a breach of fairness or natural justice to refuse to grant an adjournment in such circumstances where the failure to be prepared lies wholly at the feet of the appellant's legal representative.

35. In the alternative, if Mr. Adejumobi had not been aware of developments between the Ethiopian government and the OLF, the issue of fairness arising from the respondent's reliance upon such events would fall to be considered on fairness grounds: *Nwaigwe*. A judge considering an adjournment request would be required to consider the overriding objective. However, in this matter the decision to remove the ban on the OLF being a lawful political party had been taken almost 12 months prior to the hearing and there has been an ongoing process between the parties since such time. A competent professional lawyer representing an appellant in an asylum appeal before the First-tier Tribunal would be expected to have knowledge of the Ravichandran principle and prepare an appeal on the basis of situation prevailing at the date of hearing, so that a judge can adequately consider the appellant's asserted well-founded fear of persecution in light of the situation prevailing at the date of decision. To abrogate such professional responsibility by solely preparing on the basis of the country situation identified at the date of decision is wholly inadequate. The Tribunal will be aware that fast-paced changes in a country may require a short adjournment so that a party can seek to address events following, for example, a coup d'état or a bloody revolution. However, in this matter, I am satisfied that a competent legal professional undertaking basic research on the position of the OLF would have quickly established the failings of the decision letter in relation to the current prevailing situation and prepared accordingly. Again, it cannot be said to be a breach of fairness or natural justice to refuse to grant an adjournment in such circumstances where the failure to be prepared lies wholly at the feet of the appellant's legal representative.

36. Ground 3 raises the issue that UTJ Sheridan focused upon when considering whether the grounds advanced were arguable. Upon carefully considering UTJ Sheridan's reasoning, I conclude that he understood the grounds being advanced as contending that the appellant and his representative had not been provided with the COIS and, in addition, had been denied the opportunity to consider it or make submissions upon it.

37. Mr Adejumobi accepted before me that the respondent had expressly relied upon the recent COIS before the Judge. Although no copy was handed to either the Mr. Adejumobi or to the Judge, Mr. Adejumobi accepted before me that it is fairly common practice in proceedings before the First-tier Tribunal that a CPIN or a COIS report can be considered by a Judge after hearing if it is has been relied upon during the hearing. It is common practice for parties to direct a judge's attention to paragraphs of a CPIN or COIS that they wish to rely upon. I observe that CPINs and COISs are documents that are regularly relied upon by practitioners and indeed operate at a level where a meritorious challenge on error of law grounds could be made if a judge failed to consider them. Further, Mr Adejumobi accepted that he had not sought permission to rely upon written representations addressing the COIS.

38. A competent professional representative representing in an asylum appeal should as a basic requirement of their competency be up-to-date as to the present country situation and be expected to have either read or have accessed the relevant CPIN or COIS reports relating to the country relevant to the appeal in which they represent. A judge will be mindful as to circumstances where a CPIN or COIS is relatively new as not to have been considered by a representative, and may accede to a request for further time to read it that day, or to file written submissions as to the document within a few days of the hearing.

39. The heart of Mr. Adejumobi's complaint on behalf of the appellant is that he sought, and was denied, an adjournment of several weeks to read a COIS specifically relating to his client's appeal, that was published some six or so weeks before the hearing before the Judge. This is in circumstances where he had been aware of the significant change to the position of the OLF in Ethiopia, but contrary to the long-established Ravichandran principle had decided that he was not required to consider the current prevailing situation because it was not addressed by the respondent's decision letter. I find that it cannot be said to be a breach of fairness or natural justice to refuse to grant an adjournment in such circumstances where the failure to be prepared lies wholly at the feet of the appellant's legal representative.

Notice of Decision

40. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

41. The decision of the First-tier Tribunal is upheld, and the appeal is dismissed.

42. An anonymity direction is made.

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

43. Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed: D. O'Callaghan
Upper Tribunal Judge O'Callaghan

Dated: 6 April 2019

TO THE RESPONDENT
FEE AWARD

As the appellant has been dismissed, no fee award is made.

Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan

Date: 6 April 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email