



IAC-AH-SC-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: UI-2022-002522
PA/00876/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On the 4 October 2022**

**Decision & Reasons Promulgated
On the 16 November 2022**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**AASA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert, Counsel instructed by ZD Spicer Zeb
For the Respondent: Ms A Everett, Senior Presenting Officer

DECISION AND REASONS

**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.

1. The Appellant is a citizen of Ethiopia. His date of birth is 1 May 1995.
2. In a decision on 28 April 2022 the First-tier Tribunal (Judge Lodato) granted the Appellant permission to appeal against the decision of the First-tier Tribunal (Judge Zahed) to dismiss the Appellant's appeal against the decision of the SSHD on 15 January 2020 to refuse his application on protection grounds.
3. The Appellant is a national of Ethiopia. He sought asylum on the basis of his support for the Oromo Liberation Front ("OLF"). He raised a number of factors on appeal, which he said created a likelihood that he would be persecuted by the Ethiopian authorities on return including his political profile as a supporter of the OLF, his parents' political profile as members or supporters of OLF, his ethnicity as an Oromo Muslim and his place activities.

The Decision of the First-tier Tribunal

4. The judge heard evidence from the Appellant. Taking into account a medical report from Dr Cortese of 17 August 2021 the judge applied the Joint Presidential Guidance Note No. 2 of 2010, the judge identified the Appellant as a vulnerable adult. He had been diagnosed with PTSD, depression and having emotional and psychological stress.
5. The judge said at paragraph 22 that he had taken into account all documents, the background evidence and the case law mentioned by the parties as well as in the Appellant's skeleton argument.
6. The findings of the judge can be summarised as follows:-
 - (1) The Appellant's lack of knowledge of Oromo customs and traditions damages his credibility and claim that he is of Oromo ethnicity and that his parents were OLF supporters.
 - (2) If the Appellant's mother was an OLF activist and supporter, as the Appellant has claimed, she would have taught her children to speak Oromo. That she did do so was said to undermine the Appellant's claim and his credibility.
 - (3) The Appellant attended a few OLF demonstrations simply to bolster his claim.

- (4) The Ethiopian authorities would not be able to identify the Appellant as someone who is an OLF supporter.
- (5) The Appellant will not suffer any risk on return.
7. In relation to the medical evidence, the Appellant relied on Article 3 ECHR. The judge stated as follows:-
- “29. I have considered the medical evidence and accept that the appellant was ill treated in Libya, however, I find that he will not be returned to Libya. I find that the appellant’s medical condition emanates from what occurred to him in Libya and not from his time in Ethiopia and Sudan. I find that the appellant’s medical condition does not reach the high threshold in N.”
8. The judge went on to state in conclusion as follows:-

“30. It was submitted by the appellant’s counsel that if I were to find that the appellant was not of Oromo ethnicity that as there is an internal flight within Ethiopia that either Article 15C applies or it would be unduly harsh to return the appellant to Ethiopia. I do not find that if the appellant were returned to the capital of Ethiopia that Article 15C applies. The appellant has not produced any evidence that the situation at the capital reaches the threshold of Article 15C. Further I do not find that to return the appellant who speaks Aramaic and who is 26 years old and is physically well will be unduly harsh. I dismiss the appellant’s asylum claim, humanitarian protection claim and human rights claim.”

The Grounds of Appeal and Submissions

9. At ground 1 it is asserted that the judge inadequately considered the Appellant’s background namely the significance of Kemise, where the Appellant was from, being part of the Oromia Special Zone of Amhara. The area was specifically set up for the Oromo and therefore there is a reasonable likelihood that the Appellant is Oromo and/or given his place of birth would be perceived to be Oromo by the Ethiopian authorities.
10. The judge gave no consideration to the special status of the Appellant’s birthplace and failed to adequately consider the Appellant’s complex background and upbringing, namely that he is Muslim, Kemise town has a special Oromo status and is part of the wider Amhara region which is subject to Amhara culture and language and that Kemise town has been subject to armed clashes since 2019 between Amhara and Oromo factions.
11. The judge did not adequately consider that it was not disputed that the Appellant fled to Humera in the Wolqayt-Tsegede area when he was aged 10. There was no analysis of the impact of that on the Appellant (including the impact on language and cultural knowledge).

12. The judge failed to consider the impact of trauma when considering the Appellant's credibility or whether he would be perceived to be Oromo given his birthplace.
13. At ground 2 it is asserted that the Tribunal's approach to the assessment of humanitarian protection was inherently flawed. The judge failed to grapple with the Appellant's home area as a starting point to assessing risk. It was not disputed that the Appellant's home area has been subject to an internal armed conflict. The judge simply considered humanitarian protection on the basis of the Appellant returning to Addis Ababa. That would imply an acceptance of indiscriminate violence occurring, although no finding was made. However, in assessing return to Addis Ababa the judge failed to apply any internal flight guidance or law whatsoever.
14. The judge failed to consider the reasonableness of the Appellant relocating to Addis Ababa and gave no weight to the fact that the Appellant has never resided outside the north of Ethiopia and he has not resided in Ethiopia since he was 14 years of age over twelve years ago. He has been the victim of mistreatment and has significant mental health issues. He has no ties to Addis Ababa and there is an ongoing conflict of which the Appellant's characteristic and background are of importance when assessing relocation. The judge failed to apply paragraph 339(O) of the Immigration Rules.
15. At ground 3 it is asserted that the assessment of Article 3 is flawed. The judge applied the high threshold of N rather than the Supreme Court decision in AM (Zimbabwe) v SSHD [2020] UKSC 17.
16. At ground 4 it is asserted that the judge erred in his assessment of risk on return because he failed to apply the country guidance case of MB (OLF and MTA – risk) (Ethiopia) CG [2007] UKAIT 0030. He failed to refer to any background materials, no proper consideration is given to the sur place activities.
17. At ground 5 it is asserted that there was no proper evaluation of the Appellant's human rights claim. The judge erroneously made no reference to it which is material given the internal conflict, the Appellant's poor mental health and lengthy absence from Ethiopia.
18. Mr Avery on behalf of the SSHD in a Rule 24 response made a partial concession. It was conceded that the judge erred in respect to Article 3 (health grounds), Article 8 and internal protection; however it was maintained that the findings in respect of credibility are lawful. At the hearing before me Ms Everett said that although she understood the reasoning behind the partial concession, in her view the findings in respect of credibility were too intertwined with internal protection to be ringfenced in the way suggested. She conceded that the judge did not make a clear finding about where the Appellant was from and that there were inadequate reasons given for rejecting the Appellant's account. She

conceded that the judge materially erred for the reasons advanced in the grounds.

Error of Law

19. I did not hear from Mr Gilbert. It was not necessary. In the light of the SSHD's concession, for the reasons raised in the grounds of appeal, I indicated to the parties at the hearing, that the judge materially erred and as a result I set aside the decision dismissing the Appellant's appeal in its entirety.

20. The appeal was remitted to the First-tier Tribunal for a fresh hearing.

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Signed *Joanna McWilliam*

Date 12 October 2022

Upper Tribunal Judge McWilliam