Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02009/2015

THE IMMIGRATION ACTS

Heard at Newport	**Decision and Reasons Promulgated**
On 20 November 2015	**On 10 December 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

SGB
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Louise Fenney, Solicitor, of NLS Solicitors
For the Respondent: Mr Irwin Richards, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellant is a young asylum seeker who might be at risk just by reason of being identified.

2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds

against a decision taken on 16 January 2015 refusing to grant him asylum and to remove him to Ethiopia.

Introduction

3. The appellant is a citizen of Ethiopia born in 1987. He claims that his parents were of Oromo ethnicity and spoke Oromifa. They moved to Addis Ababa shortly after their marriage. Because of persecution, some Oromo have adopted new names and spoken Amharic. The appellant was brought up speaking Amharic rather than Oromo. The appellant graduated with a diploma in computer science and was employed in Ethiopia as a computer expert. His father was an activist in the Oromo cause but he died in 2006. The appellant joined the Oromo Liberation Front ("OLF") in 2009 and became a full member in 2011. He was an active member and was arrested in April 2013 and detained for 99 days. He was tortured but accepts that his injuries were minor. He was released after his aunt paid a bribe. He was bundled into a truck which took him to Kenya. He was assisted by agents to travel covertly to the UK, arriving on 14 October 2013 and claiming asylum on arrival. He has attended three or four demonstrations or meetings organised by OLF in the UK. Footage taken at those events is easily available on the internet.

4. The appellant has a wife and two children (born in 2012 and 2014) in the UK. He unsuccessfully applied for a visit visa in July 2012. The respondent accepted identity and nationality but rejected the appellant's claim to be Oromo, membership of the OLF and the claimed arrest and detention.

The Appeal

5. The appellant appealed to the First-tier Tribunal and attended a hearing at Newport on 25 June 2015. The judge found that his claim not to speak Oromo was surprising given his linguistic, cultural and political background. There was nothing to substantiate the appellant's claimed political activities or that his father died because of his own political beliefs and activities. The appellant was never charged and imprisoned other than simple detention. If he was beaten for 99 days then it is surprising that only minor and superficial injuries resulted, none requiring medical treatment. The judge did not understand why the appellant had not contacted his aunt. The appellant failed to seek asylum in France. The appellant claimed that his primary intention in leaving Ethiopia was not to be reunited with his wife and daughter but to find a safe haven and to escape persecution by the Ethiopian government. That did not ring true.

6. The judge found that the letter from Dr Berri dated 24 June 2015 and the screen shots of the meeting and demonstrations did not add anything to the appeal. The judge accepted that the appellant had attended the events.

The Appeal to the Upper Tribunal

7. The appellant sought permission to appeal on the basis that the objective evidence clearly sets out that those living in non-Oromo areas would

identify as Ethiopian to avoid adverse treatment. The judge found that it was surprising that the appellant did not speak Oromo but did not make findings on the full report which was set out in the appellant's bundle. The judge failed to have regard to the appellant's mother's ID which identifies her as Oromo. Given the culture of phone tapping in Ethiopia it was not realistic to expect documents from the OLF in Ethiopia. The appellant did produce a letter from the OLF in the UK along with proof of attendance at demonstrations. The finding that the UK evidence added nothing to the appellant's claim was against case law and objective evidence. The appellant did suffer gastric problems resulting from starvation and anxiety during his detention. The Ethiopian nationality law clearly shows that to obtain nationality, the appellant's wife would need to be resident in Ethiopia. The appellant's wife and children are refugees in the UK.

8. Permission to appeal was granted by Upper Tribunal Judge Canavan on 2015 on the basis that it was at least arguable that the judge may have erred in placing too much weight on the plausibility of various aspects of the appellant's account and in rejecting his credibility without reference to the background evidence that supported the appellant's claim. It was also arguable that the judge may not have given adequate consideration to the potential risk arising from the appellant's activities in the UK.

9. In a rule 24 response dated 18 September 2015, the respondent sought to uphold the judge's decision on the basis that the judge gave clear and adequate reasons.

10. Thus, the appeal came before me.

Discussion

11. Ms Fenney submitted that the issue is whether the judge considered all of the evidence. When living in non-Oromo areas the Oromo do not speak Oromifa. If the appellant's mother is Oromo then the appellant must be Oromo. It was unreasonable to expect documents from Ethiopia. The appellant's wife is clearly not an Ethiopian citizen.

12. Mr Richards submitted that the grounds are misconceived and there is no material error of law. The judge found the appellant lacking in credibility having compared his oral evidence to his previous account. It is clear that the judge considered all of the evidence but made specific reference to examples only. The language point is not persuasive. The fact that Oromo identify as Ethiopian does not explain the lack of language as the son of parents who spoke Oromifa. The appellant is not someone who was denying his Oromo ethnicity. He should be familiar with Oromifa as a result of his ethnicity. There is no specific reference to the document relating to the appellant's mother but that is not a material error of law given the weight of adverse credibility findings against the appellant. It is not clear that permission was granted in relation to the Article 8 point.

13. Ms Fenney submitted in reply that the appellant grew up in Addis Ababa and the only language spoken was Amharic. The failure to consider the documents was a material error of law.

14. I find that the judge has substantially based the decision upon plausibility issues. It is common ground that there is no reference in the decision to the appellant's mother's identity card. There is also no reference to the objective material which was before the judge and supported the appellant's case. I find that the plausibility issues set out in paragraphs 17-19 of the decision should have been considered in the context of the objective evidence and the mother's identity card. I find that the judge has failed to make findings in relation to relevant material evidence, namely the objective evidence and the mother's identity card.

15. I have considered R (Iran) v SSHD [2005] EWCA Civ 982, HK v SSHD [2006] EWCA Civ 1037 and Y v SSHD [2006] EWCA Civ 1223. Taking all of those matters as a whole I find that the judge has failed to properly consider and make findings upon relevant evidence and that is a material error of law.

16. In addition, the judge has not explained why the appellant's UK political activities "add nothing" to the appellant's claim. That is a failure to give reasons or any adequate reasons on a material matter. There is also no consideration of risk upon return arising from the *sur place* activities.

17. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of errors of law and its decision cannot stand. I have not found it necessary to consider the Article 8 point about the nationality of the appellant's wife. I agree with Mr Richard's submission that it is not clear that permission to appeal was granted in relation to that matter. It can be argued again at the de novo hearing in the light of up to date information regarding the immigration status of the appellant's family.

Decision

18. Ms Fenney invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the errors of law infect the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal.

19. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined *de novo* by a judge other than the previous First-tier judge.

Signed  Date 1 December 2015

Judge Archer
Deputy Judge of the Upper Tribunal