



IAC-PE-AW-V1

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

Appeal Number: AA/08191/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 20th July 2015**

**Decision & Reasons Promulgated
On 27th August 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL BAIRD

Between

**MRS SARA MEKONNEN TOLLA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Smith - Counsel

For the Respondent: Ms Johnson - Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Sara Mekonnen Tolla, a citizen of Ethiopia born 19th May 1985. She appeals against the decision of the Respondent made on 2nd October 2014 to refuse to grant asylum under paragraph 336 of HC 395 (as amended) and to refuse leave to enter the United Kingdom.
2. The Appellant's appeal against the decision of the Respondent was initially heard on 19th November 2014 by First-tier Tribunal Judge Smith who dismissed it. The Appellant appealed against that decision and on 5th May 2015 having heard submissions, I found that there was a material error of

law in the determination of the First-tier Tribunal in that Judge Smith failed to properly consider all the evidence in the round.

3. I now proceed to remake the decision.
4. The Appellant left Ethiopia on 22nd September 2012 and arrived in the UK on 13th November 2012. She claimed asylum the next day.
5. No request was made for an anonymity direction in this case and it seems to me that none is necessary.

The Basis of the Appellant's Claim for Asylum

6. The Appellant claims that if she were returned to Ethiopia she would have a well-founded fear of persecution on account of her race and her political opinion. She claims to be a member of the Oromo ethnic group and a supporter of the Oromo Liberation Front (OLF). Her brother was a member of the OLF and she began supporting the party in 2006.
7. In 2007 she went to Dubai to work as a domestic servant and whilst there met and married her husband, named by the Respondent as Brian Mokwy. She and her husband then returned to Ethiopia where they rented a property. She made an application for a visa to travel to America with her husband but this was refused. Her husband was then assigned a post in the UK and on 18th February 2008 she applied for a visa to accompany him. A visa was granted with an expiry date of 28th February 2011. Her husband applied for a visit visa to take her to Mexico on holiday and this was granted but he did not actually take her to Mexico because he had to work. She remained in the UK waiting for him but although he did return briefly in December 2008, he was working away and at that point she took a job working as a cleaner for Leeds City Council and rented a room there. After two years living and working in Leeds her husband told her to return to Ethiopia and said he would sort everything out so that she could go to the USA with him. She went back to her family home in Ethiopia where she resided with her siblings and started to work in her uncle's restaurant as a cashier. She witnessed at first hand the suffering of the Oromo people as a result of which she became a member of the OLF on 10th May 2011 and from that point started to do work for them, collecting money and distributing leaflets.
8. The Appellant claims that she suffered some racial abuse from neighbours which was reported to the police by her brother. The police spoke to the neighbours but it made no difference. On 30th June 2012 she was attending an OLF meeting at her home when the authorities raided the house and discovered a list and notebook detailing the outgoings of the cell. They asked the Appellant why she had been involved in an OLF meeting. She and the other people at the meeting were arrested and taken to prison. She was separated from her group and placed in a cell with other women and remained in detention until 13th September 2012 during which period she was subjected to regular beatings and was raped once by a police officer. She became pregnant as a result of the rape. Her sister visited her at the end of July or beginning of August 2012 but

she saw no-one else. On 13th September 2012 a police officer told her she would be released that evening and later he returned and took her out of the prison where she was met by her uncle who told her that he had bribed the officer to effect her release. The officer had said that she should leave the country immediately. An agent was found who took her to Sudan and eventually she arrived in the UK. She has had no contact with her husband since April or May 2012.

Decision of the Secretary of State

9. The Secretary of State does not accept that the Appellant is of Oromo ethnicity. In reaching this decision the Secretary of State set out at great length various features of Oromo ethnicity, concluding that the Appellant had demonstrated ignorance of the Oromo culture which fundamentally undermines her claim to be Oromo. The Secretary of State noted that the Appellant had said in her interview that the Oromo have a unique system of administration called the Gadaa System but was unable to provide any details of how this system works. She appeared to know nothing of the Oromo calendar which forms the framework of the Gadaa System and according to which its schedules are governed. The Appellant had mentioned another cultural aspect, Irecha, which she described as “an Oromo cultural thing, is celebrated on the Sunday after Meskel, the finding of the cross and it is always on 17/09 (Ethiopian calendar)”. She went on to say that on Irecha Day people tend to reconcile, to forget their problems and negotiate. They talk about their own cultures and ‘all things like this’. The Secretary of State goes on to set out her understanding of Irecha and whilst she accepted that the Appellant had given the correct dates relative to it she found that she had not stated the correct purpose of the event which is to thank Waaqaa for the blessings and mercies received throughout the past year at the sacred grounds of Hora Harsadi, Bishoftu and Oromia.
10. The Secretary of State also took into account the fact that the Appellant does not speak the Oromo language although she claims to have some understanding of it. The Appellant said they only spoke Amharic at home as her mother was from the Shoa Oromo who reside on the outskirts of the city and do not speak Oromo but mainly Amharic. The Secretary of State accepted that it is reasonable that the Appellant was brought up speaking Amharic but criticised her for not having taken the trouble to learn Oromo, given that she claims to be proud to be an Oromo and that she claims to have joined the OLF because she wanted to protect the culture and language of her people.
11. With regard to her claim to be a member of the OLF the Secretary of State considered that the information the Appellant had given about the party is in the public domain and readily accessible. She lacked in-depth knowledge of the party which must be considered inconsistent with having been an active member. The Secretary of State found it implausible that the Appellant would have meetings at her home when her brother had previously reported problems from the neighbours. The Secretary of State does not accept that the Appellant was arrested and ill-treated as claimed.

Evidence at the hearing

12. A bundle of documents was provided for the hearing.
13. I have a statement from the Appellant dated 5th November 2014. She names her husband as Brail Macquee. She says her mother died in 2003.
14. She says that the OLF's main aim is to avoid colonisation and to free the Oromo people. The core policy is the struggle for self-determination. It is an illegal organisation and has been since 1992. It was formed in 1973 by an Oromo nationalist. She joined in 2011 having been a supporter since 2006. She describes the circumstances of her arrest. She describes the ill-treatment to which she was subjected and how she escaped and left Addis Ababa on 26th September 2012.
15. In response to the refusal letter she says that the Gadaa System is a system only used in the remote areas of Ethiopia and it is currently dying out. The Secretary of State failed to take into account that she is from Addis Ababa where the Gadaa System is not used. Neither the Oromo calendar nor the language is used in her area. Many of the aspects of the Oromo culture are not practised in the cities. There was no pattern of meetings for the neighbours to pick up on. The meeting at which she was arrested was the first they had had for three or four months. She and her husband are no longer together. They separated about six years ago, their last contact having been in May 2012. They did not agree on certain aspects of their future and he kept making excuses about their future. She grew tired of these excuses and decided to leave.
16. I have a letter dated 10th November 2014 from the OLF representative in the UK, Bersisa Berri, who confirms the Appellant to be a supporter of the OLF. She had phoned her in the middle of October 2014 and introduced herself to her. She told her that she had been a supporter of the OLF since May 2011 and was involved in contributing money, distributing leaflets and attending cell meetings every month. She had been arrested in June 2012 and detained for two months. Ms Berri says that she interviewed the Appellant on the phone, asked her basic questions about the OLF and received convincing evidence that she is an OLF supporter. She said she is an Oromo by ethnicity because her grandfather has a typical Oromo name and her origin is from the Oromo region. When Ms Berri asked her why she cannot speak the Oromo language she replied that she was born and educated in a city where mostly Amharic was spoken. She concludes that in the volatile political situation currently existing in Ethiopia it is very unlikely that any individual Oromo who is not involved in the existing regime would be safe to go back to Ethiopia. There are instances of deported Oromo asylum seekers having been arrested on arrival in Ethiopia or shortly afterwards and she believes that the Appellant would face similar persecution on her return.
17. I have a birth certificate for the Appellant's daughter born in England on 4th June 2013.

18. I heard oral evidence from the Appellant who adopted her statement. At the start of the hearing Ms Johnson sought to lodge a large bundle of documents relating to Facebook activity by the Appellant. It was difficult to see the significance of these documents which the Appellant's representative had had no opportunity to study or to discuss with her client. I declined to accept that evidence along with some photographs provided by the Appellant's representative. No submission was made that these were relevant to the appeal.
19. Ms Johnson in cross-examination asked the Appellant why there was no evidence that she had left the UK after arriving here in 2008 through a UK port. I did point out to Ms Johnson at this point that my understanding was that the UK border staff did not keep records of who leaves the UK. The Appellant's passport would not have been stamped. She suggested that the Appellant would have had tickets - her ferry ticket for example. The Appellant responded that the tickets were taken off her when she boarded. She was asked why she did not ask the issuer for copies. She was asked why she had, as she claimed, bought the tickets from Ethiopian Airlines in London rather than locally. She said that someone told her that that is what she should do. She could not remember where the Ethiopian Airlines office was.
20. She was asked why she had no evidence of her work with Leeds City Council and why she had no medical records of her pregnancy. She was asked why she had no GP records. She said that she did not know that such evidence would be necessary.
21. When she was asked how often she was raped she responded "twice". She could not give the dates but said it was when she was in prison. There was then very lengthy and detailed questioning about this. She said she was in prison from 30th May to 13th September 2012 and had been in prison for about two weeks when she was first raped. The second rape was about a week after the first. It was put to her that in her interview at question 134 she said she had only been raped once. She said it was twice.
22. She was asked why they insisted on having a meeting in their house when they knew the neighbours were watching them and disapproved. She said the neighbours were not aware that the meeting was taking place. She was unable to say how the authorities knew about the meeting.
23. She said she last spoke to her husband in 2012. She last saw him face-to-face in December 2008. She has not started divorce proceedings. He lied to her. She has not told him about the child. When she was initially asked if he resided with her in Ethiopia she said he did not, then she said they lived together for two years. She last applied for a visa to go to the USA in 2008. When she was in Ethiopia she was always waiting for him to join her there.
24. She rented a house there for a while before she came to the UK. She was asked about the address that she gave on the application form and said

that was her parents' house. She was asked why she gave that address if she was currently renting a house with her husband at a different address and said that the Embassy wanted the address on her passport and she gave them that. She said for confirmation of an address in Ethiopia they always expect you to provide evidence that you own the property.

25. She said that it is not safe for her siblings if she contacts them on the phone or on the Internet. Her brother is still in prison. When she was asked why he would still be held in prison when she had been released she responded that the family do not know where he is, they just feel sure he is in prison. Her family have not visited her brother. She was asked why the letter from the OLF does not mention that her brother is in prison and said that she did tell Mr Berri but he did not put that into the letter. Ms Johnson pointed out that the letter does talk of other OLF people detained in Ethiopia so it is strange that it does not mention her brother.
26. In her submissions Ms Johnson said she would rely on the refusal letter. She submitted that the evidence of the Appellant is neither credible nor consistent. She asked me to take into account that she had given the wrong address on the application form and her explanation for this is not credible. She was inconsistent about her knowledge of her husband's rank in the air force. She told the ECO that her husband was about to be transferred to Suffolk so why would she not be going there with him. Her husband left the UK a week after arriving here with her. She said in her screening interview that the main purpose of coming to the UK was to become a housewife. She also said she was here to try to reconcile with her husband so why did she leave the UK to go back to Ethiopia. She was in breach of the terms of her visa because she was not living with her spouse. There is no evidence of her employment with Leeds City Council. She could give no information about her departure from the UK to return to Ethiopia. There is no evidence of her re-entry. There is no explanation as to why she did not claim asylum at port on re-entry.
27. There is doubt about the dates of her pregnancy. The child was born on 4th June 2013. If she was raped in July the child would be due in April. If the child was conceived on 14th or 21st June the due date would be March 2012. She said the child cannot be the consequence of the rape so her evidence on that is untrue. There are no maternity records. There is doubt as to whether she was raped once or twice. She was asked in the interview what date she was raped and said it was the end of August 2012.
28. Ms Johnson said it is implausible that they would have a meeting in her house given the interest of the neighbours and the activities.
29. The OLF letter has got the period of detention wrong. There is no mention of the Appellant's brother's arrest. The Appellant apparently did not contact the OLF for confirmation of her membership until after her application had been refused. She asked me not to accept that the Appellant's brother is in prison. There is no corroboration of her attendance at protests in the UK. There is no evidence that the Ethiopian

authorities monitor Internet communication. She submitted that the Appellant would get financial help to return voluntarily to Ethiopia.

30. In her submissions Ms Smith said that the Appellant's evidence is credible. She was arrested, beaten and raped prior to being released on payment of a bribe. She would be at risk on return. The issue of whether or not she had left the UK to return to Ethiopia was not raised in the refusal letter and it is unreasonable to expect her to have kept tickets but in any event any documents she had were taken by the Ethiopian authorities when she was arrested. It was not reasonable to have expected her to keep information and evidence of her work with Leeds City Council.
31. In her interview and in her statement she said she was raped at the end of the August 2012 which would be consistent with a child having been born at the beginning of June but today at the hearing she gave different evidence. Ms Smith asked me to bear in mind that the Appellant was being asked to relate a traumatic event and it is not surprising that she was confused. She did have some knowledge of the OLF and was not asked to elaborate on any of her answers.

Burden and Standard of Proof

32. The burden is on the Appellant to show with regard to the asylum appeal that returning her would expose her to a real risk of an act of persecution for reasons set out in Regulation 6 of The Refugee or Persons in Need of International Protection (Qualification) Regulations 2006. With regard to Humanitarian Protection she would have to show substantial grounds for believing that she would face a real risk of serious harm as defined by paragraph 339C of the Immigration Rules or face a real risk of a breach of her protected human rights.

Findings and Decision

33. I have given very careful consideration to all the evidence put before me in this case. The Appellant was subjected to a very thorough cross-examination by Ms Johnson and it is the case that there were inconsistencies in her evidence. I agree with the comments in the Refusal Letter about her lack of knowledge of the Oromo language. I really find it very difficult to understand how she said in her interview that she was raped once and in oral evidence that she was raped twice. I do not accept that she would not vividly remember such traumatic events. If it happened twice she would presumably be fearful from the first time. I do not accept that she would have made a mistake about this especially in light of her subsequent pregnancy. It is difficult not to take the view that if she became pregnant as a result of the rape – a very traumatic discovery – she would be relatively clear about the likely date of conception of her child, but she was not. Her evidence of the dates of the two rapes was not at all consistent. I do accept that if as she said at her interview she was raped at the end of August 2012 her baby born on 4th June 2013 could have been the result of this rape but she said in oral evidence that she had been raped twice and the dates she gave were two weeks and three weeks after

her arrival at the prison on 30th May 2012, far too early to result in the birth of her child in June.

34. She was inconsistent and vague about whether or not she had lived with her husband in Ethiopia, again giving contradictory evidence. She gave an implausible explanation for not having given the address at which she was actually living on her application for a visa. It is difficult to comprehend why an Entry Clearance Officer would want any address other than an applicant's home address, the one at which she was legally resident and could be contacted by post or visit.
35. I question why she would leave it so late to get the letter from Ms Berri and more importantly why Ms Berri would fail to mention that her brother was in prison. As Ms Johnson pointed out, she referred to other members of the OLF being detained in Ethiopia. She says that she interviewed the Appellant on the phone, asked her basic questions about the OLF and received convincing evidence that she is an OLF supporter yet failed to mention what must be one of the most convincing aspects of her account, i.e. the fact that her brother was in prison as a result of his support for the OLF. The Appellant was incidentally very vague about her brother's whereabouts, declaring that he was in prison but when pressed for detail saying that the family just assume he is in prison. This apparent lack of effort to check whether he is in prison or not does not sit well with the Appellant's claim that her sister visited her in prison and her family arranged her release and departure from Ethiopia.
36. The Appellant's account of her marriage was vague. It is not clear where they spent their time or what actually went wrong. She was also inconsistent in her description of her husband's rank.
37. I would also say that I agree with Ms Johnson that however irregular and infrequent the meetings held at the Appellant's home, it is highly unlikely that she would hold them there in the knowledge that the neighbours knew what was going on and were likely to report them, bearing in mind the background information on the attitude of the authorities to the OLF and the ill-treatment meted out to the Oromo people.
38. I find therefore that the Appellant has not established to the standard of proof required that she is Oromo or that she was a member of the OLF. I do not accept her account as credible.
39. With regard to Article 8 ECHR no particular submissions were made. The Appellant clearly does not meet the requirements of paragraph 276 ADE of the Immigration Rules. There is nothing before me to warrant consideration of Article 8 outwith the Rules. The Appellant does of course have a family life with her young daughter but it is in the child's best interest to be with her mother and there would be no interference with that family life as they would return to Ethiopia together.

Notice of Decision

The appeal is dismissed on asylum grounds.

The appeal is dismissed on human rights grounds.

The Appellant has not established a right to Humanitarian Protection in the UK.

No anonymity direction is made.

Signed

Date: 21st August 2015

N A Baird
Deputy Judge of the Upper Tribunal