



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05486/2016

THE IMMIGRATION ACTS

Heard at Newport
On 24 August 2017

Decision & Reasons Promulgated
On 08 September 2017

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SKH
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr M Diwyncz, Senior Home Office Presenting Officer
For the Respondent: Ms E Fitzsimons, instructed by Migrant Legal Project (Cardiff)

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant (SKH). This direction applies to both the appellant (SKH) and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

2. Although this is an appeal by the Secretary of State, for convenience I will refer to the parties as they appeared before the First-tier Tribunal.

Introduction

3. The appellant is a citizen of Ethiopia who was born on [] 1986. She entered the United Kingdom on 1 October 2012 illegally and was arrested. On 2 October 2012, the appellant claimed asylum. That application was refused on 24 October 2012. Her subsequent appeal was dismissed by Judge MacDonald on 4 January 2013. The appellant's subsequent application for permission to appeal to the Upper Tribunal was refused on 28 February 2013 and she became appeal rights exhausted on 6 March 2013.
4. On 5 December 2015, the appellant submitted further representations. These were treated as a fresh claim and on 13 May 2016 the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 11 January 2017, Judge Powell allowed the appellant's appeal under the Refugee Convention and Art 3 of the ECHR. He accepted that the appellant was wanted (and of interest to) the authorities in Ethiopia and would be at risk as a consequence.

The Appeal to the Upper Tribunal

6. The Secretary of State sought permission to appeal to the Upper Tribunal.
7. Permission was initially refused by the First-tier Tribunal but on 3 April 2017, the Upper Tribunal (UTJ King) granted the Secretary of State permission to appeal.
8. Thus, the appeal came before me.

Discussion

9. Before Judge Powell, a crucial aspect of the appellant's claim was a document which, it was contended, originated from the Ethiopian police and had been sent to her mother which confirmed the appellant's detention and escape following her arrest as an OLF sympathiser.
10. It was argued before Judge Powell that, in particular, this document was evidence not considered by Judge MacDonald when he rejected the appellant's account that she had been arrested and detained because of her OLF association.
11. At para 40, the judge found the appellant's account of how this document had come into her possession not to be credible. He said this:

“40. However, I do not find the appellant's account of how this document came into her possession to be credible. I find it wholly incredible. I do not find it credible that the appellant would have engaged the agency of Million to trace her mother in

Ethiopia without seeking further information about her well being and welfare, which would reasonably include finding out about any difficulties she was experiencing from the authorities since her departure from Ethiopia and without establishing an effective line of communication with her mother. I do not find it credible that her mother would simply hand over the document without providing a narrative dealing with the interest shown to her by the state before and after the date of this document. Million's evidence is untested but his short note, which serves the appellant as evidence to show how the document reached her, is inconsistent with the appellant's evidence of his involvement. The note also indicates that the existence of the document was known before Million went to Ethiopia because he refers to bringing the agreed document back. This is inconsistent with the appellant's evidence."

12. Nevertheless, the appellant relied upon the report of an expert, Mr Schroder which included a verification that the Ethiopian state had an interest in the appellant. Mr Schroder's source was a confidential source who confirmed that the appellant was a person of interest to the authorities; confirming that there was a file on the appellant and the reference number on that file was the same as that on the document sent to her mother.
13. At paras 43-46, the judge considered the reliability of this evidence, in particular the use of a confidential source and whether there was, in effect, any risk of collusion. He said this:

"43. I have already commented on Mr Schroder's explanation for using a confidential source. His explanation is reasonable. I accept that Mr Schroder recognises the risks in relying on confidential sources. The confidential source provides two important pieces of evidence. Firstly, that the appellant is a person of interest. Secondly, that the appellant's file's reference number is the same number as appears in the document sent to her mother.

44. There is no suggestion that Mr Schroder is part of an attempt to secure the appellant's status in the United Kingdom. As such, if the evidence provided by the source on which he relies is false, there must have been a link between the source and the appellant. I say this because Mr Schroder only generated his inquiry of his confidential source after the document from her mother had been received.

45. It is for the appellant to prove to the required standard that the evidence from the confidential source is credible and reliable. In this case, did the confidential source, whom the appellant could not have known Mr Schroder would approach, lie about the existence of a file and lie about the reference number in order to add veracity to the Ethiopian document obtained from the appellant's mother? An official may be corrupt and open to bribery to generate such false evidence but in this case I do not see how this could have occurred because the document in question came from the appellant and the verification from a confidential source in Ethiopia whose identity was not known to the appellant.

46. In my judgment, notwithstanding my findings as to how the document came to be in the appellant's possession and the difficulties with its contents in the context of the absence of evidence or even a narrative from her mother as I have described, I accept the verification obtained by Mr Schroder, and find that contrary to the findings made by Judge MacDonald in the absence of this new material, the appellant has shown to the lower standard of proof that she is a person of interest to the Ethiopian authorities."

14. In her grounds of appeal, the Secretary of State contends that in accepting the expert's report and what was said in it about the reliability of the document, the judge failed to apply the principle in Tanveer Ahmed ([2002] Imm AR 318) and failed to consider its reliability in the context of all the evidence, including his findings in relation to the credibility of aspects of the appellant's evidence, such as the way in which she acquired the document.
15. In his submissions, Mr Diwyncz relied upon that ground. He also submitted that there could be another individual with the appellant's name who might be involved in activities which would warrant a file being held by the authorities, in particular the Federal Police Commission ("FPC") in Ethiopia. He also made reference to the fact that the private proceedings available to investigate forged documents set out in s.108 of the Nationality, Immigration and Asylum Act 2002 could have been invoked so as not to disclose the name of the informant.
16. Mr Schroder dealt with the genuineness of the documents at paras 76-82 of his first report at pages 23-24 as follows:

"Description

76. The document was viewed in the original at the office of Blavo Solicitors on 21 May 2014. It is of regular letter size with a bilingual header in English and Amharic on the left upper side, a police commission logo in the middle upper side and reference number and date on the right upper side. The body of the text is followed by a signature and a stamp indicating the issuing office and official. The document is stamped with the seal of the Federal Police Commission.
77. The document is printed on a laser printer including header, footer, and main text body but the FPC seal and stamp with the name and office of the signing official had been stamped on after printing. The date and the reference number are filled in by hand. Documents of this type are becoming more and more common in Ethiopia.

Assessment

78. As the matter under consideration is an alleged political "crime", it is in line with current Ethiopian practice that the FPC and not the Addis Ababa Police Commission carries out the investigation.
79. The document corresponds in format and contents to similar police summons I have seen in Ethiopia during my last visits there 2012-2014:
 - The terminology in the header is one of those used by the FPC.
 - The logo at the top of the document is one of the currently used ones.
 - The reference number is of the type used in police documents.
 - The dates are properly stated in the Ethiopian Calendar.
 - A confidential source in the head office of the FPC confirmed in December 2014 that there exists in the head office a file with this reference number under the name of Sibila Kemal Hasen

- The seal on the document corresponds to one of the FPC seals used in the last years.
- The rank of the official is correctly given as a civilian rank (Commander).
- The issuing department is one of the subunits of the FPC existing at the time the letter was issued and handling political matters.
- The official named as head of this unit occupied this position at the time the letter was issued.
- The address in the letter makes the correct use of the new administrative units of Addis Abeba introduced in 2002 (Subcity) and 2010 (Wereda).
- The stilted language marked by convoluted and very long sentences, which is employed in this letter is in line with the bureaucratic language used in Ethiopian official documents.

5 Conclusion

80. Format and contents of the document correspond to genuine documents of this type I have seen in Ethiopia or assessed. It uses the correct logo, seal, administrative unit, office name and rank and name of the official.
 81. Many forgeries of such police letters are spotted because the forgers commit substantial errors in the names of the officials serving at the time the letters were allegedly issued and/or in their titles and the names of their offices or in the administrative units of Addis Abeba because they were unable to follow up on changes related to these. In this letter, names, titles and function correspond with the date of issuance, which strongly supports that this letter is genuine.
 82. Therefore I find no indication that this document is not genuine. It is therefore my professional assessment that with a very high degree of certainty this document is genuine. It confirms that the Ethiopian authorities are informed about the political activities of MTB in the UK."
17. The expert's view is clearly that the document is a genuine one for the reasons he gives.
 18. Mr Schroder returned to the issue of the confidential source within the FPC in his second report at paras 43-45 at pages 20-21 as follows:

"43....

Source within the FPC

Files of the FPC on suspects are not accessible to the public. It is only through personal contacts to officials of the FPC to obtain information whether the FPC holds a file on a certain person or not. My contact within the FPC regard this matter was only willing to provide the information that such a file exists but not willing to divulge further details. It is the nature of confidential sources that they remain confidential. Especially in a country like Ethiopia it would be totally impossible to obtain any information on sensitive issues or official material not accessible to the public, if I were not to guard the anonymity of my sources by all means. However, as the UKBA noted I am an accepted expert on Ethiopia and I have a professional reputation to protect. I would never pass on information, which I deem to be unreliable.

I further want to stress that the FPC does not deal with regular criminal matters. It mainly deals with higher level serious crimes at national or transregional level or political cases. The fact that there is a file on SHK in the FPC can be taken as a sure indication that the file deals with alleged political crimes of SHK as there is nothing in the personal background of SHK that she is a common criminal of high calibre warranting the attention of the FPC.

FPC Official issuing the letter

The Ethiopian government does not publish the appointments to positions in the FPC. Thus there is no objective evidence such as official publications on the positions of police officials to corroborate the position of this official named in the letter. Sometimes the names of officials are mentioned in news items in the state media. However, in my report I have provided very detailed information on the officials in the FPC at various times (see especially §63). The information there provided on the staff of the FPC was collected over time since 2009 from various confidential sources including the former head of Public Affairs and Communication Department of the FPC, now living as an accepted refugee in the UK. The detailed information on the FPC, carefully checked and re-checked, I presented in my previous report can be taken as a clear indication that this official actually held the position mentioned in the letter. A sort of confirmation that Reta Tesfaye is a senior Federal police official is also proved by an Ethiopian diaspora website, which has come to my attention recently. ²² Another report from an Ethiopian opposition source probably dating from 2013 and which also has come to my attention recently, mentions Reta Tesfaye as well. He is described as an Oromo and

“Head of Federal Police Investigations for the Courts: Commander Reta is close to the head of NISS mastermind of intelligence, Getachew Assefa. He is also in charge of Maekelawi Prison where many of the prisoners are tortured. He is loyal to the TPLF.”²³

This report is biased as most oppositional website reports are but at least it confirms that this police official is a senior one involved in investigation.

44. The statement of UKBA in § 26 of the RFRL that

“Mr. Schroder has not provided any evidence to support this statement....the statements that he has made in this expert report, specifically about the police document...have not been corroborated by any specific source or evidence”

in my professional opinion ignores the realities in Ethiopia and belittles my professional efforts in putting together the assessment provided.

45. If it would be possible to confirm positions of police officers or police documents from publicly accessible sources, there would not be need of an expert. Any researcher of UKBA or of a lawyer could search out this information. However, realities in Ethiopia are different and the information needed most certainly is not publicly accessible. Therefore an expert like myself, with background knowledge acquired over decades of professional diligent research work undertaken mostly although not exclusively during frequent re-search period within Ethiopia and who has reliable confidential local resources cultivated over years is called in to provide, if possible, the needed information. In the absence of publicly accessible information on the document in question the balanced and detailed assessment I provided based upon information in my possession and my sources is professionally the best one possible under these circumstances.”

19. In his determination, at paras 43-46, the judge excludes the possibility of collusion between the appellant and the confidential source. With respect, Mr Diwyncz's point that there may be another person with the appellant's name who happens to have a file held by the FPC is entirely speculative and fails to take into account that it was not simply her name that linked the appellant to the file but also the file number which was also on the letter she relied upon.
20. Mr Diwyncz's reference to s.108 of the NIA Act 2002 also, with respect, takes the Secretary of State's argument no further. Even bearing in mind that it was not a matter raised before the judge, it would have no application to this case. Section 108(1) sets out the circumstances in which a private inquiry by a judge may take place:
- “(1) This section applies where it is alleged -
- (a) that a document relied on by a party to an appeal under Section 82 ... is a forgery, and
- (b) that disclosure to that party of a matter relating to the detection of the forgery would be contrary to the public interest.”
21. Section 108(1)(b) contemplates the situation where disclosure of a matter relating to the “detection of a forgery” would be contrary to the public interest. First, it is limited to disclosure of matters relating to the “detection” of forgery and, secondly, it applies to disclosure by the party not relying on the document to the party relying upon it. The provision is clearly intended to apply, and does apply, when an appellant relies on a document which the respondent considers to be a fraud and to establish it would require disclosure by the respondent to the appellant of the mechanism or intelligence that led to that conclusion. This is not a case involving disclosure of a “matter relating to the detection of forgery”. Further, it is not a case about disclosure of the confidential source by the party not relying on the document. It is about disclosure by the party who does rely upon the document, namely disclosure by the appellant to the respondent. Section 108(1) had no application to this case.
22. Turning to the remaining points, there is no doubt, as Ms Fitzsimons submitted on behalf of the appellant, that Judge Powell was well aware of the approach to be taken following Devaseelan [2003] Imm AR 1 given Judge MacDonald's adverse finding. He took Judge MacDonald's finding as the starting point. Judge Powell had additional material, in particular Mr Schroder's reports and the document now relied upon by the appellant to show she was of interest to the Ethiopian authorities. The judge was clearly well aware that he had found aspects of the appellant's account not to be credible. Whilst he did not accept how the appellant had come into possession of the document, there was ample evidence before him to find that the document was a reliable one showing the interest of the Ethiopian authorities in the appellant. If she was, it is not suggested that the judge was wrong to find that she was at risk of persecution on return. I am wholly unpersuaded that his findings were irrational or otherwise not properly open to him on the evidence.

23. For these reasons, I reject the Secretary of State's grounds challenging the judge's decision.

Decision

24. For the above reasons, the First-tier Tribunal's decision to allow the appellant's appeal on asylum grounds and under Art 3 of the ECHR did not involve the making of an error of law. That decision stands.
25. Accordingly, the Secretary of State's appeal to the Upper Tribunal is dismissed.

Signed



A Grubb
Judge of the Upper Tribunal

7 September 2017

TO THE RESPONDENT
FEE AWARD

There is no fee award.

Signed



A Grubb
Judge of the Upper Tribunal

7 September 2017