



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03995/2017

THE IMMIGRATION ACTS

Heard at Glasgow
Promulgated
On 1st February 2018

Decision & Reasons
On 10th April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

GB
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Loughran and Co, Solicitors.

For the respondent: Mr Miles Mathews, Home Office Presenting Officer.

DETERMINATION AND REASONS

Introduction

1. Although it is the Secretary of State who is appealing in these proceedings for convenience I will continue to refer to the parties hereinafter as they were in the First-tier Tribunal.

2. The appellant claimed protection in July 2016 on the basis he was an ethnic Oromo who would be at risk from the Ethiopian State if returned. He said since a child he grew up in an atmosphere conscious of the position of the Oromo people. He said when he was around 11 years old government officials attempted to detain his father for his support of the Oromo Liberation Front (the OLF). His mother intervened and officials shot her and then shot his father. His sister arranged for him to stay with a friend of their mothers in a different area.
3. About a month after his parents killing he attended a small demonstration in support of the OLF along with other schoolchildren. He was detained for a few days during which time he was ridiculed and then released.
4. For several years he carried out unpaid work at a compound where he was living .He then he began distributing leaflets about the Oromo .His sister thought it advisable he leave the country. By this stage he had married. He left using an agent, going to Sudan and then Italy and France. His wife met him here and they now have a child.

The refusal

5. The respondent accepted he was Ethiopian but did not accept that he was Oromo. He was asked about Oromo traditions and some answers were considered vague or incorrect. He was asked to explain the Gadaa system and again his answers were considered vague or incorrect at times. He said men and women were members but the country information indicated it was only men. He said he spoke Oromo but his interview was carried out in Armaric.
6. His account of the activities of his parents and siblings with the OLF was considered vague or contradictory. His account of his own involvement was considered unsatisfactory. He was asked about becoming a member and could not describe the process.
7. His account about taking part in the demonstration was considered inconsistent. For instance, he claimed the demonstration was in Arsi where he had been living but had said he had moved to Sululenta after his parents died. He then amended his account to say he only moved to Sululenta several months after the death of his parents.
8. Section 8 was raised in the assessment of his credibility. He had not claimed protection for several weeks after being in the United Kingdom and had passed through France and Italy where he could have claimed.

The First tier Tribunal

9. His appeal was allowed by First-tier Judge David Clapham SSC following a hearing on 11 August 2017. At paragraph 49 the judge said he was prepared to accept his evidence that when he was 11 his parents were killed by the authorities. He was also prepared to accept that after this he was detained because of his involvement in a demonstration. He also accepted he was warned against any OLF involvement. The judge referred to the country information which indicated human rights abuses by the authorities.
10. At para 24 the judge said it was difficult to be wholly satisfied the appellant's profile meant he would be of interest to the authorities. The killing of his parents was some time ago as was his own detention. Nevertheless, the judge accepted his parents having been killed and the appellant having been detained, albeit only for a few days, and concluded there was a real risk for him on return. The judge acknowledged a discrepancy in the appellant's account as to whether he left his parents home after a few days or months. The judge felt this did not detract from the truth of his account.

The Upper Tribunal.

11. The respondent sought permission to appeal on the basis the reasoning of the judge was inadequate and had not engaged with the respondent's reasons for refusal. There was no finding as to the appellant's ethnicity; the fact he gave his account in Amharic; and the judge's acceptance without explanation of the discrepancies of his account. Permission was granted on this basis.
12. I have received a rule 24 response from the appellant's representatives. It refers to paragraph 54 and 55 of the judge's decision where the judge accepted the appellant's evidence and his reference to the low standard of proof. There was also reference to the Tribunal decision of Shizad (sufficiency of reasons : set aside) [2013] UKUT 00085 where it was stated that a judge's reasons need not be extensive if the decision as a whole makes sense.

Consideration

13. I have considered the decision in the round. It is my conclusion the judge has not given adequate reasons for his conclusions and has not addressed the respondent's concerns. The judge has made findings but has not given reasons behind the findings nor has he assessed the evidence and dealt with the concerns of the respondent in any meaningful way.

14. The judge at paragraph 48 did not attach any weight to the delay in claiming asylum or the failure to claim in third countries on the basis an agent was directing travel. His reasons there are rational and have not been challenged.
15. At paragraph 31 the judge poses the question of whether the appellant, having been detained on a single occasion when he was a child, can be said to be at real risk. The judge is posing a relevant question assuming the underlying claim is true. The judge then refers to country information about human rights abuses. However, this does not answer the question posed. At paragraph 54 the judge acknowledged difficulties in finding the account would have rendered him of interest to the authorities. However, the judge then concludes having accepted his parents had been killed and that he was briefly detained he would be at risk. The judge has not engaged with the fundamental questions: whether he is in fact Oromo or if so why there would be a risk given the passage of time and the nature of the incidents claimed.
16. At paragraph 55 the judge acknowledges discrepancies in the appellant's chronology. The judge then rationalises by a non-sequitur that a consistent account could be fabricated whereas an account with discrepancies could be true. This does not properly address the issues in this case. The judge appears to acknowledge on the claim made there is a possibility he is being unduly generous. The fact there is a low standard of proof, as the judge mentions, does not mean any account must be believed and this does not explain the conclusion.

Conclusions

17. The judge has not engaged with the fundamental questions raised by the respondent about the appellant's ethnicity and the truth of the claim. Aside from this, he has not properly assessed on the facts he found whether a real risk exists. It is not sufficient to simply state findings or conclusions without explaining them.
18. My conclusion therefore is that this inadequacy of reasoning means there is a material error of law in the decision. Consequently it cannot stand.

Decision.

The decision of First-tier Judge David Clapham SSC materially errs in law and cannot stand. I remit the matter to the First-tier Tribunal for a de novo hearing.

Francis J Farrelly

Deputy Upper Tribunal Judge

2nd April 2018

Directions

1. Relist for a de novo hearing before any First-tier Tribunal except First-tier Judge David Clapham SSC.
2. The appellant's representatives are to advise whether the interpreter should be one conversant in Amharic or Oromo.
3. A chronology and skeleton argument should be provided by the appellant's representatives.
4. A time slot of one and a half hours can be anticipated.

Francis J Farrelly

Deputy Upper Tribunal Judge

2nd April 2018