



IAC-FH-LW-V1

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

Appeal Number: PA/06586/2017

THE IMMIGRATION ACTS

**Heard at Newport
On 13 April 2018**

**Decision & Reasons Promulgated
On 23 May 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**E O C
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Caseley, Migrant Legal Project (Cardiff)

For the Respondent: Mr D Mills, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a national of Ethiopia, has permission to challenge the decision of the Judge Lever of the First-tier Tribunal (FtT) sent on 26 September 2017 dismissing his appeal against the refusal of the respondent dated 21 June 2017 of his protection claim.

2. The appellant raised four grounds of appeal. The first was to submit that the judge erred in law in failing to have regard to relevant country guidance cases. The judge who granted permission found this not arguable and Ms Caseley did not seek to revive it before me. The other three grounds contend that the judge erred in law: in conducting an erroneous approach to credibility evincing a lack of regard for background country evidence supportive of the appellant's account and unlawful reliance on plausibility based on his own view of what was inherently implausible; in failing to reach findings on material matters relating to the appellant's sur place activities; and in taking an unlawful approach to the medical evidence from Dr Arnsby Williams.
3. I am grateful to Ms Caseley and Mr Mills for their careful submissions.
4. It is convenient if I take the grounds in reverse order.
5. I find no merit in the challenge to the judge's treatment of the medical evidence. The judge did not fail to regard Dr Arnsby Williams' report as independent evidence or to reject it because it was based wholly on the appellant's account as given to Dr Williams. It is clear that the reasons why the judge decided to place little weight on this report were to do with a number of flaws in it relating to the limited amount of evidence the doctor had about the respondent's reasons for finding the appellant not credible and the mismatch between the diagnostic criteria of PTSD and the judge's evidential basis for finding those criteria met.
6. As regards the judge's treatment of the appellant's sur place activities, the judge's analysis at paragraph 36 sets out clear reasons why he had doubts about the nature and extent of these activities. The grounds take issue with the judge's failure to make a finding on whether the appellant was present at a protest during a meeting in the UK at which representatives of the Ethiopian government were present; Ms Caseley clarified that this concerned a meeting held in Newport. However, the judge gave sound reasons for not accepting that evidence. The grounds also allege that the judge did not make a finding as to whether, on the basis of the appellant's sur place activities, he was a genuine supporter of OLF. Once again, however, it seems to me that in paragraph 36 the judge properly focused on whether the appellant's sur place activities (such as he had been able to establish) showed that he had or would come to the adverse attention of the Ethiopian authorities. I do not think that in reaching these findings the judge failed to take into account background country information regarding the use by Ethiopian agents in the UK of advanced surveillance technology. The judge's findings were entirely within the range of reasonable responses. The judge was entitled to conclude (purely for the purposes of assessing the factual issue of what level of activities he had actually conducted in the UK that the appellant himself had a strong motive to keep a low profile, namely his anxiety that such activities might lead the Ethiopian authorities to harm his mother if his views or activities became known to them.

7. I do not consider the grounds make out the argument that the judge erroneously based his implausibility findings on UK-centric ideas of what was plausible; however, I accept that there is a separate problem with the judge's implausibility findings that is best dealt with separately.
8. Coming to that, I am persuaded that the judge did materially err in law in his treatment of the background country evidence. The judge's assessment that two particular aspects of the appellant's account lacked plausibility is difficult to square with the background country evidence that was before him; namely the implausibility of his account that his father as an OLF supporter would have been repeatedly arrested; and the implausibility that the authorities would target the appellant as the family member of an OLF supporter.
9. Significantly Mr Mills was able to strenuously defend the respondent's decision against all the grounds of appeal save for this one. I consider this represented a proper recognition on his part that the above errors amount to a significant failure in assessing what is best described as the "external consistency" between the appellant's account and background country evidence. In my judgement, this error amounts to a material error of law.
10. Notwithstanding that I have found the judge's decision to be free of legal error except in two limited respects, I see no alternative to remittal of the case to the First-tier Tribunal, since these errors crucially affected the judge's credibility assessment and it would be artificial to seek to preserve some findings of fact regarding credibility but not others. Hence the FtT will need to make fresh findings of fact on all material matters.
11. That said, the parties should understand that as a result of my analysis, palpable flaws have been identified in the existing medical report and the appellant's sur place activities have not been seen to create any significant profile or to be likely to attract the adverse attention of the Ethiopian authorities. Given that the next tribunal judge will have to consider the case ex nunc, it will also be relevant now that there has been have been very significant changes in the Ethiopian political landscape with an Oromo head of government and release of a significant number of oppositionists. These are matters that will have to be considered in light of whatever further background evidence the parties produce.
12. The only other matter I would mention is that in light of whatever medical evidence is available in time for the next hearing the judge will have to decide whether to treat the appellant as a vulnerable witness under the Joint Presidential Guidance Note of 2010.

Notice of Decision

13. For the above reasons:

The FtT materially erred in law.

The case is remitted to the FtT (not before Judge Lever) to be heard de novo.

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 his 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.

Signed:

Date: 16 May 2018

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Dr H H Storey
Judge of the Upper Tribunal