Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10235/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 February 2018	**On 17 April 2018**

Before

THE HONOURABLE MR JUSTICE NICKLIN
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE PERKINS

Between

SXU
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms M Ghermane, Counsel instructed by Virgo Solicitors
For the Respondent: Mr S Clark, Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 we 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. We make this order because this is a protection case and there is invariably a risk in cases of this kind that publicity will itself create a risk.

2. This is an application by the applicant challenging the decision of the First-tier Tribunal promulgated on 27 November 2017. Permission was

granted by First-tier Tribunal Judge Foudy on 28 December 2017. The grounds upon which permission was granted were that the judge had erred in assessment of the risk on return to Ethiopia and the appellant's *sur place* political activities and in the decision the judge made no findings on the effect in Ethiopia, if any, of the appellant's political activity in the UK. It is arguable that those activities might place the appellant at risk on return even if the rest of his account is incredible.

3. The brief background to the matter is that the appellant claimed to have left Ethiopia in September 2006 and travelled by Sudan and ultimately through France to Calais and arrived in the United Kingdom, clandestinely, on 27 March 2017. He lodged his claim for asylum on 7 April 2017. The basis of his claim for asylum was that he faced persecution in Ethiopia due to his political opinion as a result of his support for Ginbot 7 (herein referred to as G7). It is contended that the appellant's brother was extrajudicially killed by the authorities for being a supporter of G7. Ultimately the decision of the Secretary of State made, on 3 October 2017, was to refuse his application on asylum, humanitarian protection and human rights grounds on the basis that she did not accept that the appellant was a supporter or member of G7 as claimed and she relied then on the inconsistencies identified in the appellant's evidence. The judge below did place substantial reliance on the fact that the appellant's evidence was inconsistent. He made a series of detailed findings in that respect. For example, in paragraph 14(c) he said this:

> "In cross-examination the appellant said that he had been a cell member and was asked to explain the difference between that role and that of a supporter. He said that a supported can be a member of a cell and that he was a supporter but not a member."

The judge then found there was no credible evidence to show that the appellant was ever a cell member or supporter and he referred to some photographs that were provided.

4. On behalf of the Secretary of State, Mr Clarke says that that was a finding that the judge was entitled to make. On behalf of the Appellant, however, it is submitted that there are no clear findings, in light of the evidence that was before the judge, of his level of support or his perceived support for G7. The importance of that emerges from the country specific information which was Ethiopia dated 2017, paragraph 9 of the determination states:

> "Anyone who is a member or perceived to be a member of an armed opposition group designated as terrorist organisations may be subject to surveillance, harassment, arrest and imprisonment where they are at a risk of incommunicado detention, torture and other abuses, or even extrajudicial killings. This may also extend to supporters of these organisations of those who the government suspects of being supporters."

5. The argument that is put forward is, firstly, that when assessing the appellant's evidence and his credibility the judge below has failed to direct himself as to the important fact that the appellant was a minor, aged 17.

As such, he should have given specific consideration to the UNHCR Guidelines on protection and care and the more liberal approach and the benefit of doubt that should be applied to minors in the context of immigration cases:

> "The problem of proof is great in every refugee status determination. It is compounded in the case of children. For this reason the decision on a child refugee status calls for a liberal application of the principle of the benefit of doubt. This means that there should be some hesitation regarding the credibility of the child's story. The burden is not on the child to provide proof, that the child should be given the benefit of the doubt."

6. The first ground that is advanced is that the judge failed to direct himself as to the importance of that principle. It was, given the lower burden in an asylum case, a matter that would have to be assessed with some care. However, it is right that the judge did not acknowledge this principle and I find that ground has force and that would be a basis on which the appeal should be allowed.

7. A second ground has been advanced. It is submitted that it was incumbent upon the judge to make clear findings on the basis of the evidence, even if he rejected elements of the appellant's account, as to his involvement or perceived involvement with G7. The nature of the country specific information meant that perception was relevant in this case. In those circumstances, I accept the submission that the judge did not make clear findings as to the level of involvement of the appellant, or his perceived involvement. In consequence, it follows, that Judge Foudy made no findings as to the likely impact on the Appellant or the consequences he might face if he were to be returned to Ethiopia.

8. For both of those reasons we consider that the appeal should be allowed and that we should remit the matter for redetermination in the First-tier Tribunal with no fact findings being remitted back.

Notice of Decision

The appeal is allowed.

We set aside the decision of the Firs-tier Tribunal and direct that the appeal be heard again in the First-tier Tribunal.

Signed:  Date: 22 February 2018

Mr Justice Nicklin