



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

Appeal Number: PA/14262/2016

THE IMMIGRATION ACTS

Heard at Liverpool

On 30th January 2018

**Decision & Reasons
Promulgated**

On 27th February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**A R U
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Wood of IAS Liverpool

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Austin (the Judge) of the First-tier Tribunal (the FtT) promulgated on 4th April 2017.
2. The Appellant is an Ethiopian citizen born in January 1994. He arrived in the UK on 15th June 2016 and claimed asylum based upon a fear of persecution by reason of his support for the Oromo Liberation Front (OLF).

3. The asylum and human rights application was refused on 11th December 2016 and the appeal was heard by the FtT on 1st February 2017.
4. Evidence was given by the Appellant and the appeal was dismissed on all grounds. The judge found the Appellant to be an incredible witness and did not accept his claim to have been detained in Ethiopia because of OLF activities, and because it was not accepted that he had been detained, it was not accepted that he had been released following payment of a bribe, as he had claimed. The judge noted that the Appellant failed to claim asylum in Italy and France and made an adverse credibility finding pursuant to section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.
5. The Appellant applied for permission to appeal to the Upper Tribunal. The grounds are summarised below.
6. The Appellant challenged the findings of the judge at paragraph 41, contending that he had reached an arguably perverse finding. It was contended that the judge noted that the Appellant claimed to have beaten nightly, and to have been interrogated about his OLF involvement and erred in finding “that he would be reasonably expected to have had a clear knowledge of his own direct involvement as a supporter if that had happened in the way he claims.” The Appellant argued that it was unclear how being the victim of regular beatings and questioning by the Ethiopian authorities could rationally “clarify” matters in the Appellant’s mind.
7. The conclusions of the judge at paragraph 42 were also challenged. The judge had found that there were inconsistencies concerning the nature of the Appellant’s claimed release from detention. It was contended that there was no actual inconsistency. The Appellant’s evidence on this point had remained the same throughout. There was no objective or other evidence to support the judge’s conclusion that the Appellant’s account was inconsistent. In addition the judge had questioned why the Appellant, if he was released would be of remaining interest to the authorities. It was submitted that the answer to this was in fact recorded at paragraphs 18 and 19 of the decision, which records the Appellant’s evidence that he would be at risk because he had been arrested for an illegal activity, and released by payment of a bribe, not released formally by the authorities. It was contended that the judge had failed to engage with the Appellant’s evidence on this point.
8. The Appellant challenged the findings of the judge at paragraphs 44-45 in which the judge stated that particular weight was given to the provisions of section 8 of the 2004 Act, and the Appellant’s failure to claim asylum in either Italy or France was “significant”. It was contended the judge was wrong in law to attach particular weight to the failure to claim asylum and the appropriate course would have simply been to take the failure to claim asylum into account, but in any event it had been found in Uxbridge Magistrates’ Court ex-parte Adimi [1999] EWHC 765 (Admin) that a

potential refugee had “a choice of refuge beyond the first safe territory by land or sea”.

9. Permission to appeal was granted by Designated First-tier Tribunal Judge Macdonald in the following terms;

“The grounds of application say that the judge’s reasoning is perverse as it is unclear how being the victim of regular beatings and questioning could rationally “clarify” matters in the Appellant’s mind. Furthermore his evidence was not inconsistent and the judge attached too much weight to his failure to claim asylum in other countries.

Looking at what the judge said in paragraph 41 of the decision, the reasoning is arguably not entirely clear. In these circumstances permission to appeal is granted on all grounds.”

10. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In summary it was contended that the judge had directed himself appropriately and that his comments at paragraph 41 had been artificially separated and not considered in context.
11. With reference to paragraph 42 it was submitted that it was open to the judge to assess the Appellant’s claim to have been unaware of the arrangements for his departure, especially given the limited wealth of the Appellant’s family.
12. It was submitted that the judge was entitled to place weight on section 8 and there was nothing in his assessment to indicate that he had applied significant weight beyond that permitted. The judge at paragraph 45 had found that the Appellant’s failure to claim asylum in a safe country was significant, but it was contended that that did not, as claimed in the grounds, substantiate an argument that significant adverse weight was attributed under section 8.
13. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the judge had erred in law such that the decision should be set aside.

Submissions

14. I heard oral submissions from both representatives which are summarised below.
15. Mr Wood relied upon the grounds contained within the application for permission to appeal. He observed that there had been a considerable delay between the hearing of the appeal before the FtT on 1st February 2017 and promulgation on 4th April 2017. I was asked to find that the judge had made a perverse finding in paragraph 41 as explained in the grounds.

16. The judge was wrong to state in paragraph 42 that the Appellant had given an inconsistent account regarding his release from detention. The Appellant would be at risk if returned, if he had been released following payment of a bribe. Mr Wood pointed out that background evidence supported the Appellant's claim to have been tortured while in detention. Mr Wood submitted that the judge was wrong to state at paragraph 42 that the Appellant was not told to leave the country to avoid further mistreatment, as at paragraph 16 of the FtT decision, which summarised the Appellant's case, it was stated that the Appellant's uncle told him it was not safe to remain in Ethiopia.
17. With reference to failure to claim asylum in a safe country such as Italy and France, it was submitted that JT (Cameroon) [2008] EWCA Civ 878 at paragraphs 8 and 21, indicated that it was wrong to attach particular weight to behaviour that fell within section 8 of the 2004 Act.
18. Mr Wood submitted that the decision should be set aside, with no findings preserved, and remitted to the FtT to be heard afresh.
19. Mr Bates took a different view, submitting that the judge had considered the evidence in the round and made sustainable findings.
20. With reference to paragraph 41, Mr Bates submitted that the finding made by the judge was to the effect that if the Appellant had suffered significant ill-treatment as he claimed, he would have been consistent when describing events that led up to that detention and ill-treatment.
21. With reference to paragraph 42 Mr Bates submitted that the judge meant that the Appellant had not been told to leave the country by the person releasing him following payment of a bribe.
22. With reference to paragraph 43 it was accepted that the Appellant had always said that he did not know the cost involved in securing his release and paying an agent to assist him to travel to the UK. He had always said that his uncle had supplied the funds, but Mr Bates' pointed out that the judge had rejected that evidence, and it was open to the judge to make a finding that it was incredible that the Appellant was "almost entirely ignorant of the arrangements made for his departure and the cost involved".
23. With reference to section 8 of the 2004 Act Mr Bates submitted that the judge had considered the evidence in the round and did not take section 8 as a starting point.
24. In response Mr Wood observed that Mr Bates' comments formed part of the missing reasons in the FtT decision. For reasons previously explained, Mr Wood submitted the judge had erred in law and the decision was unsafe and should not stand.
25. At the conclusion of oral submissions I reserved my decision.

My Findings and Conclusions

26. I consider firstly the challenge to paragraph 41 of the FtT decision. This is not expressed as clearly as it could be, but in my view does not disclose perversity. It is not disputed that the Appellant gave different accounts as to how he came to be arrested. In my view what the judge is stating in paragraph 41, is that given the ill-treatment the Appellant claimed to have suffered in detention, it would be reasonable to expect him to recall what activities he had undertaken that led to his detention, rather than give differing accounts as to the number of times he was involved in leafleting. I find no material error of law disclosed on this point.
27. In my view the judge erred in making reference to inconsistencies in paragraph 42. It is the Appellant's case that he was told to leave Ethiopia by his uncle. Therefore the judge's finding that he was not told to leave the country to avoid further mistreatment appears to be incorrect. The judge poses the question, that if the Appellant was released how would he be of remaining interest to the authorities. The answer to that question can be found in the Appellant's account at paragraph 19 of the decision. He explained that he had been arrested for an illegal activity and released by payment of a bribe, not released formally by the authorities. I therefore conclude that there are errors within this paragraph, but in my view they are not material to the overall decision. The judge has made other findings which have not been successfully challenged, in relation to the Appellant's credibility, and the findings in paragraph 42 do not infect those other findings.
28. The third challenge to the decision of the FtT relates to paragraphs 44-45 and the fact that the judge attached particular weight to the Appellant's travel to the UK without claiming asylum in Italy and France. I do not find any material error of law disclosed on this point. I accept the point made by Mr Bates that the judge did not take section 8 of the 2004 Act as a starting point. I am satisfied that the judge considered the evidence in the round. The judge was entitled, in my view, at paragraph 45 to find the Appellant's failure to claim asylum in Italy and France to be significant. I do not find that the judge was wrong in law to give particular weight to the provisions of section 8 of the 2004 Act. At paragraph 19 of J1 (Cameroon) guidance is given that there should be no undue concentration on minutiae which may arise under section 8, and a global assessment of credibility is required. In my view, as previously stated, the judge did undertake a global assessment of credibility. At paragraph 20 of J1 (Cameroon) it is stated that section 8 factors shall be taken into account in assessing credibility, and are capable of damaging it, but the section does not dictate that relevant damage to credibility inevitably results. At paragraph 21 there is a further statement that Tribunals must take behaviour falling within section 8 into account in assessing credibility although at one end of the spectrum, there may, unusually, be cases in which conduct of the kind identified in section 8 is held to carry no weight at all in the overall assessment of credibility on the particular facts.

However where section 8 matters are held to be entitled to some weight, the weight to be given to them is entirely a matter for the fact finder.

29. My reading of the FtT decision is that the judge followed the guidance as set out above. As the fact finder, the weight to be given to behaviour falling within section 8, such as a failure to claim asylum in a safe country, is entirely a matter for the fact finder.
30. It was common ground between the parties before the FtT, that the appeal turned on the question of credibility. There are a number of findings made by the judge in relation to credibility that have not been challenged. At paragraph 40 the judge summarised a number of issues in relation to the Appellant's credibility, such as the nature of his involvement with OLF and his detention, the nature of his release, financing of his release and travel abroad and his ignorance of the arrangements, and his claimed relationship for a period of thirteen months with one agent who travelled with him from Ethiopia to the UK.
31. The judge noted at paragraph 44 that the Appellant had been with the agent for ten of the thirteen months that he travelled, and he spent three months in detention in Libya, but could not give the name of the agent. The judge was entitled to take that into account when assessing credibility. The judge also noted the Appellant's claim that having been detained in Libya, the agent reappeared and paid for his release, with funds provided by the Appellant's uncle. The judge was entitled to draw an adverse credibility finding from that, taking into account the Appellant's account that not only did he have no idea of what had been paid, he was not in contact with his uncle in any way.
32. I conclude that the grounds demonstrate a disagreement with the conclusions reached by the judge, and show that the judge erred at paragraph 42, but not materially for the reasons given above, and I find no material error of law disclosed in the FtT decision.

Notice of Decision

The decision of the FtT does not disclose a material error of law and is not set aside. The appeal is dismissed.

Anonymity

I make an anonymity direction because the Appellant has made a claim for international protection. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the Appellant 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. This direction is made pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date: 5th February 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date: 5th February 2018

Deputy Upper Tribunal Judge M A Hall