Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03877/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6 August 2019	**On 11 September 2019**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

W.N.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms. C. Jaquiss, Counsel, instructed by Virgo Solicitors
For the Respondent: Mr. L. Tarlow, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of Judge of the First-tier Tribunal Maka ('the Judge'), sent to the parties on 30 May 2019 by which the appellant's appeal against

the decision of the respondent to refuse to grant him leave on international protection grounds was refused.

2. The appellant appeals with permission of JFtT Boyle as to ground 3 and UTJ Reeds as to grounds 1 and 2.

Anonymity

3. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Though aware that it will usually be in the public interest for proceedings to be conducted by means of open justice, I am mindful that the appellant has sought international protection and I make this order to avoid a likelihood of serious harm arising to him from the contents of his protection claim being publicly known:

> Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings

Background

4. The appellant is a national of Ethiopia and is presently aged 18. The respondent does not dispute the appellant's claimed date of birth.

5. He asserts that he left Ethiopia in 2016 and travelled onto Sudan and then Egypt before travelling by boat to Italy. He then travelled onto France before arriving in this country on 11 September 2017, claiming asylum the next day.

6. The appellant states that he was born in Oromia, Ethiopia and is an ethnic Oromo. His brother was arrested in February 2015 having been alleged to have organised a peaceful demonstration against the Government. The appellant's brother was killed by the authorities in October 2015. The appellant's family gathered to mourn and offer prayers, but the assembly was raided by the authorities and his father was arrested. He was accused of supporting the Oromo Liberation Front ('OLF'). The appellant states that he has had no contact with his father since this date. Consequent to these events the appellant asserts that he started to support the youth wing of the OLF, the Qeeroo. He distributed leaflets and provided financial contributions. He states that he was arrested on 11 January 2016 whilst at school, being accused of being an agent of the OLF. He details that he was

questioned and beaten during his detention before being released 19 days later with the aid of a bribe paid by his parents to a police officer. He then left Ethiopia.

7. His application for international protection was refused by way of a decision dated 7 March 2018. The appellant was aged 17 at this time. The respondent observed several inconsistencies in the appellant's claim. In his SEF he stated that his brother was killed during the course of a demonstration in 2015, whilst in his written statement and interview he detailed that his brother took part in demonstrations in 2014, was arrested in February 2015 and killed in October 2015. He also denied in his interview that the authorities made any admissions as to his brother's death, but later in the interview stated that his father was informed that the death was consequent to his support for the OLF. It was also noted that the assertion that the appellant's father was arrested whilst mourning for a son was inconsistent with the reference in the appellant's SEF to his father being arrested at a demonstration.

8. It is appropriate to observe at this juncture that the appellant completed an 'unaccompanied asylum-seeking children statement of evidence (SEF)' on 25 September 2017 when he was aged 16. This form was completed by his present solicitors on his behalf. The respondent invited the appellant to attend a 'statement of evidence form (SEF) minor asylum interview' on 5 March 2018, when the appellant was aged 17. The appellant was accompanied by a social worker. Consequently, when preparing his SEF and undertaking his interview the appellant was a minor.

Hearing before the First-tier Tribunal

9. The appeal came before the Judge sitting at Hatton Cross on 30 April 2019. The appellant was represented by Ms. Jaquiss. The Judge made adverse credibility findings and dismissed the appellant's appeal observing, *inter alia,* at [53], [55] - [57]:

> '*I noted the major inconsistencies referred to within the appellant's SEF statement (page 35 of 37). This was a document which the appellant completed himself with the assistance of his solicitor and their interpreter. I note the appellant said in his document that his brother was one of the students killed during a demonstration in 2015 at university. He also said his father, who also took part in this demonstration was arrested towards the end of 2015 and detained and the appellant left shortly after his father's arrest. The SEF statement was signed by the appellant on 25 September 2017.*
>
> …

Pausing there, I accept in principle there can be interpreter errors when things are said and translated. I also take note of the appellant's age at the time. However, I do not accept the 'interpreter error' explanation before me. This was not a Home Office interpreter but his solicitor's interpreter. This is not just a simple sentence error but aspects which go towards the core of the appellant's account. There is a big difference between the appellant's brother being killed during a demonstration at university and being killed some considerable time later in October 2015 by the authorities after a period of detention. There is also a difference between his father taking part in demonstrations being arrested and being arrested when he was mourning the death of his son.

I have nothing from the appellant's solicitors on this. I would have expected them to at least explain what happened and why and how an interpreter they employed seemingly made some fundamental mistakes. I find the mere reference to 'interpreter error' in this statement as implausible and a throwaway submission to embellish the account before the substantive interview. The additional statement was compiled some five months after the SEF statement and some 13 days prior to the substantive asylum interview. The appellant had plenty of time and opportunity to amend his SEF which he had completed. I do not accept something as fundamental as this would not have been reasonably noticed by the appellant or his solicitors for some five months. I have no explanation about this whatsoever.

I also note the appellant adds for the first time in this statement he was also involved with the OLF and was detained by the authorities. He was asked about this in cross examination. I do not accept his explanation he was 'asked to be brief' to be plausible. A detention for 19 days where ill-treatment is supposed to have occurred at the hands of the state is not something that will be missed out in a SEF form without any reference at all. It is for the appellant to explain what, why and how these errors or omissions occurred. I find he has plausibly failed to do so.'

10. The Judge made several other adverse credibility findings. I note examples at [60], [62]:

'I have other concerns about this appellant's evidence. I find the appellant is not a truthful witness. He said in cross-examination he was not in contact with any family member. This was not what he told his therapist at the Refugee Council (Bundle 3, page 25), who noted he claimed to have called an extended family member before Christmas and was told his mother was sick. The family member did not know where she was or how to reach her. When this was put to him in cross examination, he then mentioned an account of getting in touch with his mother by sending her a voice message through this extended family member (Dabre). I do not accept this. The therapist noted the extended family member was unable to get in touch with his mother as he did not know where she was or how to reach. It is not what the appellant said.'

…

The appellant also said in cross-examination he suffered injuries in detention. He did not have any medical treatment. He maintained this until Q69 of his interview was put to him during cross examination. He then seemed to imply he was unconscious and so did not know he was taken to hospital, something which he claimed in interview but did not mention in cross examination. He then seemed to imply the hospital treatment was because of the demonstration he attended. I am satisfied I am not being given a truthful account.

11. The Judge rejected the entirety of the appellant's claim. He had never been involved with the OLF, nor had any family members. His brother had not been detained or killed by the authorities. He further found that the appellant did not possess a well-founded fear of persecution by being Oromo or that any discrimination encountered by being Oromo reached the article 3 threshold. At [73] the Judge reasoned:

> '*I have considered the recent changes which were highlighted to me in respect of the OLF. I'm satisfied these are fundamental changes in the country situation allowing me to depart from the country guidance case of [MB (OLF and MTA – risk) Ethiopia CG [2007] UKAIT 00030]. I find these are not just paper changes but durable changes, which have been implemented with concrete measures such as de-listing the OLF as a terrorist organisation. I have not been referred to anything in the objective evidence or by Dr. Berri what shows after these changes that the OLF are still being imprisoned or persecuted. I do not accept the appellant's evidence on this.'*

Appeal

12. The appellant relies upon three grounds of appeal: i) the Judge failed to take account of medical evidence; ii) the Judge failed to apply the relevant guidance when considering the account given by the appellant as a child; and iii) the Judge failed to provide strong and cogent reasons for departing from country guidance.

13. In granting permission on ground 3, JFtT Boyes reasoned:

> '*Ground 3 is arguable as an error of law. It is arguabale that the Judge's conclusions could have benefitted from greater detail and more in-depth reasoning as to why one was departing from CG.'*

14. In granting permission on grounds 1 and 2 UTJ Reeds observed:

> '*I am satisfied that it is arguable as ground 1 asserts that the failure to consider the medical evidence, which related to his time on arrival, was in error as it*

failed to take into account any impact that may have had on his ability to have given a consistent and credible account.

As to ground 2, whilst at the date of the hearing the appellant was an adult, it was common ground that he was a child at the time of the events in question and therefore it was arguable that on that basis for the reasons given in the grounds, the guidance was applicable and should have been taken into account (see AM (Afghanistan) [2017] EWCA Civ 1123).'

15. The respondent filed a rule 24 response.

Decision on error of law

16. The primary ground advanced by the appellant is that the Judge erred in law by failing to consider the guidance of the Court of Appeal in *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123, [2018] 4 WLR 78 when assessing any discrepancies in the appellant's evidence. Ms. Jaquiss notes that she referred to the guidance in her skeleton argument filed with the First-tier Tribunal.

17. I observe that it was not the appellant's stated position before the First-tier Tribunal that any discrepancies in his evidence prior to the hearing was due to his age or maturity, or due to his inability to construct an account of his history. Rather, being aware that the respondent relied upon discrepancies in his evidence, the appellant asserted by way of his witness statement dated 17 April 2019, at [1] and [3]:

'Firstly, I would like to maintain the contents of my witness statement at paragraph 5 where I sought to clarify the amendment to my duly completed SEF form. My witness statement is the most accurate account of my claim for asylum. It was prepared by solicitors following a read back of my duly completed SEF. The clarification to my SEF form was submitted prior to the conductance of my substantive asylum interview and not after. This clarification is important to my case and I feel the Home Office should have accepted it. It is not uncommon for interpreting problems to occur during the course of preparing asylum claims. The fact that the information was clarified in advance of my asylum interview is indicative of my effort to present a genuine claim. I feel that in light of my minority age I should have been given the benefit of the doubt in this instance.'

…

Furthermore, I do not feel that I have not provided sufficient information about my father's arrest and detention. I clearly stated in my SEF form when he was arrested. In my asylum interview I also provided the date of his arrest. My responses may not have been exact, but I do not feel that they are inconsistent or discrepant …[1]

18. As detailed above, the Judge did not accept the appellant's evidence as to his having a problem with an interpreter when preparing his SEF statement in September 2017. The Judge observed that the interpreter had been provided to the appellant by his solicitors and no evidence had been presented by the solicitors to seek to explain the occurrence of the asserted negligent interpretation. Further, the Judge reasonably observed that it was not one sentence within the statement in which an error was said to have occurred, but it was said to be a problem permeating throughout the statement. The lack of explanation from the appellant's solicitors is striking in light of the serious allegation being made by the appellant as to a professional interpreter they instructed, and such silence could quite rightly be relied upon by the Judge. Importantly, the appellant has not sought to challenge the Judge's decision as to interpretation error and so must be deemed to accept that the Judge's decision on this issue was lawful.

19. Ms. Jaquiss contends that though the appellant's own position is that he was capable of providing clear evidence as to his history, and it was the failings of an interpreter that resulted in perceived discrepancies, she had further advanced before the First-tier Tribunal that there was an overarching requirement for the Judge to consider evidence presented by the appellant when a minor through the prism of the Court of Appeal's guidance in *AM (Afghanistan)*. I agree that when considering evidence presented by a minor asylum seeker, even in circumstances where post-presentation of that evidence they reach majority, a judge is required to have in mind both the Court of Appeal's guidance and relevant Presidential guidance so as to ensure that there is a fair determination of the appeal. In this matter the Judge expressly took into account the appellant's minority at the time of the preparation and presentation of the evidence at [55]. There is no requirement that a judge detail in full the relevant guidance, it is sufficient that they have it in mind and observe that they do so within their decision and reasons. The Judge was aware that the appellant was a minor at the time he presented the evidence under scrutiny but was entitled to assess the case as advanced before him. The appellant was aided in the preparation of his September 2017 statement by his solicitors, who he continues to instruct. He had time in which to present his history to his solicitors and had time to read his statement before it was signed. He was not presenting this evidence during the course of a Home Office interview, circumstances which may be stressful and give rise to anxiety. He cannot rely upon any asserted professional negligence conducted by his interpreter. In such circumstances the Judge was entitled to conclude that the appellant's age was not such as to explain his inconsistency. The guidance in *AM* provides that the Tribunal be aware as to vulnerability, it does not establish that such vulnerability, for example due to age, is an insurmountable defence as to inconsistencies, omissions and changes as to personal history. In this matter, the Judge undertook the assessment lawfully, being mindful as to the appellant's age, and gave lawful

and cogent reasons for not accepting the appellant's stated personal history to the requisite standard.

20. The appellant's second ground of complaint is that the Judge failed to take account of a psychiatric report authored by Dr. John Cutting, dated 26 April 2019, relied upon by the appellant. Dr. Cutting opines that the appellant had suffered from Childhood Emotional Disorder during the first four months of his arrival in the United Kingdom, for which he received 12 sessions of treatment. Ms. Jaquiss accepts that by the time the appellant was interviewed the disorder had cleared. She asserts that the Judge failed to consider the medical evidence when assessing the appellant's reticence to disclose his mistreatment in Ethiopia to the Home Office and further failed to assess whether or not the disorder had been caused by mistreatment in Ethiopia.

21. I again observe that this medical evidence was not relied upon by the appellant himself in his witness statement or oral evidence before the First-tier Tribunal as an explanation for inconsistencies and omissions in his evidence. His witness statement confirms that he does not believe he was inconsistent or discrepant either in his SEF or his interview. Ultimately, a Judge is required to consider the case as advanced and not to have to root around the evidence trying to identify other potential basis of claim. By way of her skeleton argument before the First-tier Tribunal, Ms. Jaquiss relies upon Dr. Cutting's report as corroborating evidence to the extent that he arrived in this country with an emotional disorder. The Judge was lawfully permitted to rely upon the many inconsistencies in evidence as establishing that the appellant was not a credible witness. Whilst there is no express reference to the report of Dr. Cutting, its contents are not such as to establish a material error of law in the Judge's decision. It was not relied upon by the appellant as an explanation for discrepancies and when taking the evidence into account as a whole, is simply insufficient to establish the appellant's case that he was severely ill-treated by the Ethiopian authorities.

22. Ms. Jaquiss fairly observed in her submissions that if she were unsuccessful on grounds 1 and 2, she could not succeed on ground 3. Her contention is that the Judge failed to give cogent and strong reasons for finding that there had been a durable change in Ethiopia so as to not follow the authoritative country guidance provided by this Tribunal in *MB*. A country guidance determination of the Upper Tribunal remains authoritative unless and until it was set aside on appeal or replaced by a subsequent country guidance determination: *R. (on the application of Qader) v Secretary of State for the Home Department* [2011] EWHC 1765 (Admin). Ms. Jaquis relied upon the Court of Appeal judgment in *R (SG (Iraq)) v. Secretary of State for the Home Department* [2012] EWCA Civ 940; [2013] 1 W.L.R. 41. I note that the Court of Appeal observed that although a country guidance decision carries significant weight, it does not purport to cover every conceivable scenario, and is

not to be applied without qualification. Therefore, each case has to be assessed sensibly against it.

23. Though concise the Judge's reasoning is lawful. A country guidance case is authoritative in any subsequent appeal, so far as that appeal relates to the country guidance issue in question; and depends upon the same or similar evidence. The Judge appropriately observed that significant changes have occurred in Ethiopia as to the position of the authorities and the Oromo minority since the decision in *MB*, promulgated some 12 years previously. There has been a change in leadership and Prime Minister Abiy Ahmed has sought to transform the human rights landscape. Parliament lifted the ban on the OLF and in August 2018 a peace agreement was reached between the Ethiopian government and the OLF. In February 2019 over 1000 Oromo fighters laid down their weapons. As at the date of decision, the Judge could reasonably decide that there had been a fundamental and durable change to the political situation in Ethiopia so as to not to regard the decision in *MB* as authoritative.

Notice of Decision

24. An anonymity order is made.

25. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law. The decision of the First-tier Tribunal is upheld.

26. The appeal is dismissed.

Signed: D. O'Callaghan

Upper Tribunal Judge O'Callaghan

Dated: 6 September 2019