Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08839/2019

Heard at Bradford
on 12 March 2020

Decision & Reasons Promulgated
on 19 March 2020

THE IMMIGRATION ACTS

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MFD
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, Solicitor, of Fountain Solicitors.
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Myers promulgated on 30 September 2019 in which the Judge dismissed the appellant's appeal on all grounds.

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Background

2. The appellant is a citizen of Ethiopia born on 1 September 1991 who claimed to be a supporter of PG7, as were his father and his brother, although the appellant claimed he did not tell the other family members of his involvement. The appellant claimed to have attended demonstrations in his home area of Gondar. On 1 November 2016 the appellant claims he and other members of his cell were at a meeting which was raided by the Ethiopian authorities. Two members of the cell were shot, and the appellant beaten unconscious and taken into detention. The appellant claimed he spent two months in detention during which time he was tortured although, following payment of a bribe by his uncle, he was released and subsequently left Ethiopia. The appellant claims his father and brother have been held in detention since 2016 and that he does not know what has happened to them.
3. The appellant claims he has joined PG7 in the United Kingdom and attended meetings and demonstrations and claims he will face a real risk on return to Ethiopia as a result of his political activities.
4. The Judge sets out findings of fact from [20] of the decision under challenge in which the Judge finds that the appellant had not made out his case even to the lower standard for the reasons given between [21 – 35] of the decision under challenge. The Judge's conclusions at [36] are in the following terms:

> 36. I cannot find that the Appellant has made out his claim that he had to leave Ethiopia because of persecution due to his political activities. In any event even if he had made out his claim, it was conceded by Mr Hussain on behalf of the Appellant that there had been a change of circumstances in Ethiopia and PG 7 was no longer a banned organisation, however in his submission it was too early to say that there was cogent evidence of change. Having found that the Appellant had not made out his claim, it is unnecessary for me to make findings as to the current country situation in Ethiopia. Nevertheless, it is interesting to note that at around the same time as this hearing Abiy Ahmed, the Prime minister of Ethiopia was awarded the Nobel Peace Prize for ending the war with Eritrea and bringing about fundamental change in Ethiopia, including appointing former dissidents to political roles.

5. The appellant sought permission to appeal asserting the Judge made irrational findings on material matters, failed to make findings on material matters relating to the appellant's sur place activities, failed to apply applicable country guidance case law, and failed to consider article 8/paragraph 276 ADE.
6. Permission to appeal was refused by another judge of the First-Tier Tribunal but granted on a renewed application by a judge of the Upper Tribunal, the operative part of which is in the following terms:

> 2. It was arguably an error of law not to make any findings in respect of the appellant's claim that removal from the UK would breach article 8 ECHR, given that it was raised by the appellant. It is arguable that the appellant could face very significant obstacles to integration into Ethiopia even if he would not face persecution or a real risk of suffering serious harm;

> and therefore, arguably, the findings in respect of the asylum claim do not necessarily mean that the article 8 claim, relying upon the same or similar facts, would inevitably not succeed.
>
> 3. It was also arguably an error for the Judge to state at para. 36 that because the appellant had not made out his claim it was unnecessary to make findings on the current country situation in Ethiopia, when, arguably, it was necessary to consider the current country situation as an integral part of the assessment of whether the claim was made out.

Discussion

7. Mr Howard, in his submissions, focused on the claim relating to the background material and country guidance case law. He also submitted the Judge failed to consider the Danian point regarding the appellant’s sur place activities. It was accepted PG7 no longer exist but submitted it was necessary to consider all the available material. A new fact-finding mission to Ethiopia had been published by the respondent dated 10 February 2020 and the country situation was relevant and should have been considered by the Judge.
8. The core finding of the Judge, which has not been shown to be infected by arguable legal error, is that the appellant lacked credibility and had not established his claim. At [33] the Judge writes:

> 33. I have serious concerns about the appellant’s evidence because of the numerous inconsistencies and his inability to give satisfactory answers in cross-examination. It may be that he suffers from memory problems, and it may be that these problems caused by ill-treatment suffered either in Ethiopia or on his journey to the UK. However, the onus is upon the Appellant to prove his case to the lower standard and in the absence of any medical evidence or anything else to explain the inconsistencies in his case I cannot find that he has done so.

9. The Judge considered the appellant’s sur place activities at [34 – 35] in which the Judge noted that despite having claimed to have joined PG7 in the United Kingdom the appellant had not attended any activities or meetings since June 2018 which coincided with the date he actually joined the organisation.
10. The Judge’s finding the appellant had failed to make out his claim to face problems in Ethiopia or that he had a genuine adverse political opinion demonstrated by activities in the United Kingdom is a finding within the range of those available to the Judge. Even if joining PG7 in the UK, as found, is disingenuous it could still give rise to a real risk of ill treatment depending on the view of a potential persecutor, whatever the appellant’s motives, the Danian point. In this case it was not made out the appellant joined PG7 for anything other than disingenuous reasons or that the facts he did so will have come to the attention of the authorities in Ethiopia for, on the facts as found, the appellant has no credible adverse profile and did not attend meetings or undertake activities for this group which may have been monitored by the authorities in Ethiopia.
11. The updated country material proved by Mr Howard also clearly states that this group have now disbanded and members, including high

profile leaders, do not face a real risk on Ethiopia as a result the changes that have occurred in that country.

12. The Judges comment at [36] that it was not necessary to consider the country material relates to the appellant's original Grounds as he claimed it was as a result of the country conditions that he will face a real risk on return in light of his claim. The claim was not found to be credible meaning the appellant was no more than a failed asylum seeker. It is not made out by reference to the grounds, evidence before the Judge, or country material that the appellant will face a real risk on return in light of his profile as found in light of the country material. No arguable legal error is made out.
13. The far as ECHR is concerned, the Judge dismisses the appeal so far as article 3 is concerned in line with the rejection of the protection claim. In relation to article 8 the Judge's Record of Proceedings clearly shows that counsel representing the appellant confirmed at the outset that article 8 was not in issue. The Judge was entitled to view this is a matter that had been conceded/withdrawn and was therefore not a live issue before the Judge. It is not made out any submissions were made to the Judge in relation to this aspect either. No arguable legal error is made out.
14. In any event the country material and factual matrix, as found, does not, arguably, establish the appellant can succeed either within or outside the immigration rules or on human rights grounds.
15. Whilst the appellant disagrees with the Judge's findings and clearly wishes to remain in the United Kingdom the grounds fail to establish arguable legal error material to the decision to dismiss the appeal sufficient to warrant a grant of permission to appeal to the Upper Tribunal.

Decision

16. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

17. The First-tier Tribunal made up an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

    I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed……………………………………………….
Upper Tribunal Judge Hanson

Dated the 12 March 2020