Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11003/2018 (P)**

THE IMMIGRATION ACTS

Decided under rule 34 (P)
On 2 July 2020

Decision & Reasons Promulgated
On 15 July 2020

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

W K
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation (by way of written submissions)
For the appellant: Mr D Hewitt of Counsel instructed by J D Spicer Zeb Solicitors
For the respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. This appeal comes before me following the grant of permission to appeal by First-tier Tribunal Judge Haria on 23 January 2020 against the determination of First-tier Tribunal Judge Saffer, promulgated on 2 January 2020 following a hearing at Bradford on 23 December 2019.

© CROWN COPYRIGHT 2020

2. The appellant is an Ethiopian national born on 6 July 1982. He claims to have entered the UK in July 2017 via Italy and France and claimed asylum on the basis that he would be at risk on return to Ethiopia because of his support for the Ginbot 7 (PG7). He claims to have attended secret meetings, to have distributed leaflets and to have given seeds to members to sell for financial gain. He claims that he was detained once or twice and to have been released on the second occasion after payment of a bribe. In the UK, he claims to have joined PG7 and to have attended a demonstration.

3. This appeal has a long history and it is helpful to set that out here. The respondent's decision was made on 31 August 2018 and a pre-hearing review was conducted on 1 October 2018. The appeal was listed for hearing at Manchester on 15 October 2018. That hearing was adjourned to 8 November 2018 when it was adjourned again because the respondent adduced new country evidence which undermined the appellant's case. An adjournment was granted so that the appellant could undertake his own research. Another pre hearing review then took place on 8 January 2019 with the substantive hearing on 22 January 2019 before First-tier Tribunal Judge Raikes. The appeal was dismissed by way of a determination promulgated on 7 February 2019. Permission to appeal was refused by First-tier Tribunal Judge Bulpitt on 21 March 2019 but granted by Upper Tribunal Judge Jackson on 29 April 2019. It was heard by Upper Tribunal Judge C Lane at Bradford on 4 June 2019 and remitted to the First-tier Tribunal for a fresh hearing. It then came before First-tier Tribunal Judge Saffer on 23 December 2019.

4. The judge essentially accepted the appellant's account but dismissed the appeal because of the transformation of the human rights landscape in Ethiopia following the election of a new Prime Minister, the removal of the ban on the PG7 and the OLF and the disbanding of the PG7 (at 19). He found that past PG7 support or membership would not give rise to a real risk of harm and that the changes had been significant and durable so that reliance upon MB (OLF and MTA - risk) Ethiopia CG [2007] UKAIT 00030 was no longer appropriate.

5. The appellant puts forward two grounds which, as presented are interlinked, but the criticisms made are several. It is argued : (1) that the judge departed from country guidance without giving cogent reasons for so doing; (2) that he relied on the 2019 CPIN report and not the 2017 one which the respondent had referred to in her decision letter and that the full CPIN report had not been adduced; (3) that the evidence did not support the statement by the judge that there were no political prisoners; (4) that the judge did not give reasons for why he preferred the 2019 CPIN over MB and the 2017 CPIN; and (5) that had the judge restricted consideration to the 2017 CPIN, he would have allowed the appeal given his positive findings of credibility.

Covid-19 crisis

6. As a result of the Covid-19 pandemic and need to take precautions against its spread, directions were sent to the parties on 28 April 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.

7. The Tribunal has received written submissions from both parties and no objections have been raised to the matter being considered on the papers. I now proceed to consider the material on file and to make a decision on whether or not the judge materially erred in law such that his decision should be set aside.

Discussion and Conclusions

8. I have considered all the evidence, the grounds for permission and the submissions made by both parties.

9. No challenge has been brought in respect of the judge's article 8 findings and those, therefore, stand.

10. The appellant's written submissions are dated 11 May 2020. In summary they argue that that the determination be set aside and then re-decided by the Upper Tribunal without the need for a further oral hearing but on the basis on further submissions, possibly even as a new country guidance case. It is maintained that if the judge was bound by MB, then the appeal must be allowed. It is submitted that the respondent relied upon the 2017 CPIN in her decision letter and that indicated that persons such as the appellant who had been active in an opposition group would face persecution, particularly as PG7 was viewed as a terrorist group. It is submitted that the appeal should have been allowed on the basis of the material relied on by the respondent in her decision letter combined with the positive credibility findings made by the judge. It is submitted that extracts from the 2019 CPIN were adduced at the hearing and that this raises procedural challenges as the judge would have had to have undertaken his own research if he wanted to have regard to the entire report. It is submitted that the contents if the report do not support the findings made, that the report does not amount to cogent evidence which justifies departure from country guidance and that there was no evidence that the changes were durable and well established. The submissions point out that the judge was wrong to say that the report suggested that there were no political prisoners; rather, it stated that a number of political prisoners had been released. It is submitted that whilst this could be a first step, it was not evidence of a durable change. It is also submitted that the judge gave no reasons for departing from the existing country guidance in MB or from the 2017 CPIN relied on by the respondent in her decision letter. It is suggested that country guidance is

in desperate need of an update if judges are to be stopped from undertaking their own analysis and reaching inconsistent conclusions.

11. The respondent's submissions of 18 May 2020 are that there was strong and cogent evidence before the Tribunal to warrant a departure from MB and that the judge had provided reasons for doing so. It is pointed out that the judge considered whether the changes were durable, found that they were and that in light of the changes in Ethiopia reliance upon country guidance which was over 12 years old and which Counsel had conceded in submissions was in need of an update, was no longer appropriate. The respondent points out that the change in country circumstances was first brought to the attention of the appellant on 8 November 2018 and that was why the hearing had been adjourned. The respondent submits that the appellant did not seek to provide any rebuttal evidence but merely continued to rely on MB. It is accepted that the 2019 CPIN evidenced no high profile political prisoners rather than no prisoners at all but that the judge's omission of 'high profile' did not impact upon the outcome of the appeal given the extent of the changes that had occurred. Reliance is placed on extracts from the 2019 CPIN. It is argued that it does not simply focus on high profile leaders and that the judge obviously preferred the 2019 to the 2017 report as it was more up to date. Various extracts from the CPIN are relied upon. It should be mentioned here that the references given of 2.5.7, 2.5.15, 2.5.21 and 2.5.28 are inaccurate and should be 2.4.7, 2.4.15. 2.4.21 and 2.4.28. I also state at this point that I have not had regard to these parts of the CPIN as they were not part of the extracts that had been placed before the judge.

12. There has been no reply from the appellant to the respondent's submissions although by way of the directions of 28 April 2020, he was given seven days to file and serve a response.

13. The country information adduced by the appellant for his June 2019 appeal consisted of the 2018 report from the US State Department, a 2019 Human Rights Watch report (on events of 2018), the Amnesty International report for 2017/2018, two CPIN reports for October 2017 and one for November 2017. The same bundle was resubmitted for the December 2019 hearing along with further personal evidence. No further country information was adduced.

14. I deal first with the criticism that the judge had regard to the CPIN of 2019 as opposed to 2017 and gave no reasons for this. I note that the grounds are prepared by the same Counsel who appeared at the hearing before Judge Saffer. I also note from the Record of Proceedings that he raised no objections to the submission of the 2019 report at the start of the hearing when it was adduced or during the course of his submissions. No adjournment application was made for time to consider this document and indeed, I note that reference to the change in country conditions by

the respondent was the reason the hearing of November 2018 was adjourned although there is nothing on file to suggest that the respondent served any documentary evidence following that adjournment.

15. The Country Policy and Information Note Ethiopia: Opposition to the government Version 3.0 was published in August 2019, four months prior to the hearing on 23 December 2019. It is surprising that this was not included in the appellant's appeals bundle in place of the three out of date 2017 CPINs that were; it is certainly best practice to adduce more up to date evidence where it exists. As the respondent points out in her submissions the appellant was put on notice in November 2018 that her view was that the country situation has changed in Ethiopia and that the appellant then had ample opportunity to adduce any evidence to rebut that position. Plainly the 2019 CPIN could not have been relied on by the respondent in her decision letter as that letter was prepared in August 2018. However, quite rightly, as the respondent observes in her submissions, it is her duty to bring to the attention of the Tribunal any relevant evidence: UB [2017] EWCA Civ 85 at paragraph 16.

16. It is difficult to follow the appellant's argument that cogent reasons were not given by the judge for preferring the 2019 CPIN to the 2017 CPIN. It is surely obvious that a more up to date report is preferable than an out of date one. Moreover, as the appellant's representatives will be aware, judges are required to decide asylum appeals on the situation as it exists at the date of the hearing and not as it was at the date of the decision. It would have been an error of law had the judge relied on the CPIN 2017 to allow the appeal when there was more up to date evidence which pointed to a different outcome. I find no merit whatsoever in the complaint that no reasons were given for the reliance on the 2019 evidence. This is simply a disagreement on the part of the appellant because the older outdated evidence was more advantageous to his case.

17. The appellant also argues that the submission of an extract of the 2019 CPIN raises "*procedural challenges*" because "*unless the IJ (sic) relied only on the pages provided, then he would have been forced to undertake his own research outside of the information provided*" (paragraph 12 of the grounds and paragraph 21 of the submissions). The only basis for this contention is that the judge's findings at paragraph 19 are not supported by the CPIN extract. I have considered paragraph 19 with care. I would note that there is nothing at all in that paragraph that would suggest that the contents were based only upon a summary of the CPIN. With that in mind, I have considered the country information as a whole, as it was before the judge and excluding the extracts from CPIN cited in the respondent's submissions which were not.

18. Although the appellant's submissions maintain that the judge was given pages 37 and 38 of the CPIN, the Tribunal files shows that in fact pages 35

and 36 were adduced and that they cover s. 8.1.1-8.1.7 on PG7 (also known as Ginbot 7, G7 and Patriot Ginbot 7). That extract provides the following relevant information: that it was reported on 22 June 2018 that the group had ceased all armed attacks following reforms announced by the new government and confirmed that it would call off all assaults in order to support the agenda of the new Prime Minister (8.1.5), that due to internal disputes it was highly unlikely to become a major opposition party (8.1.6), that as of May 2019 the party did not exist, that its activities had a year earlier been regularized by the government, that it had been disbanded and had announced a unilateral cease fire with a view to engage in peaceful struggle and that they had returned to Ethiopia from their base in Eritrea in September 2018 (at 8.1.7).

19. The US State Department report in the appellant's bundle provides the following information:

"Abiy's assumption of office was followed by positive changes in the human rights climate. The government decriminalized political movements that had been accused of treason in the past, invited opposition leaders to return to the country and resume political activities, allowed peaceful rallies and demonstrations, enabled the formation and unfettered operation of new political parties and media outlets, continued steps to release thousands of political prisoners, and undertook revisions of repressive laws. On June 5, the parliament voted to lift the SOE.

Both the number and severity of these human rights issues diminished significantly under Abiy's administration, and in some cases they were no longer an issue by the end of the year.

The government took positive steps toward greater accountability under Abiy to change the relationship between security forces and the population. In August the federal government arrested former Somali regional president Abdi Mohamoud Omar on human rights grounds. On June 18, the prime minister spoke to the nation and apologized on behalf of the government for decades of mistakes and abuse he said amounted to terrorist acts.

The federal and regional governments released 9,702 prisoners in the six weeks following the former prime minister's announcement of prisoner releases on January 3. During these weeks the government released the vast majority of imprisoned high-profile opposition politicians, journalists, and activists.

The federal attorney general dropped charges and/or granted pardons to 744 individuals charged with or convicted of crimes of terrorism and corruption. Of that number, 576 were convicted and serving prison terms, while 168 were still on trial. The majority, more than 500, walked out of prisons on May 29. The justifications provided by the government for the releases included remorse by the convicts, abatement of the threat to society, and ability to contribute to the continued widening of political space. Senior opposition politicians, journalists, activists, and government officials charged with terrorism and corruption were included in those released.

On May 29, authorities released Ethiopian-born British citizen Andargachew Tsige, second in command of Patriotic Ginbot 7 (PG7), a former government-designated terror organization delisted in June, on a "pardon under special circumstances." Detained in 2014, Andargachew was serving two life sentences and was sentenced to the death penalty.

On July 20, the HPR, in an emergency session passed a bill providing amnesty for individuals and groups under investigation, on trial, or convicted of various crimes. The law applies to persons and organizations convicted of crimes committed before June 7. The federal attorney general announced that those seeking amnesty must register within six months from July 23. On August 23, the federal attorney general announced 650 prisoners in four federal prisons benefitted from releases via either a pardon or the granting of amnesty. The government granted amnesty to more than 200 of these prisoners in accordance with the amnesty proclamation.

In September, in keeping with a long-standing tradition of issuing pardons at the Ethiopian New Year, four regional governments released 8,875 persons.

There were no high-profile political prisoners at year's end, because the government dropped charges and/or granted pardons to more than ten thousand individuals charged and convicted with crimes of terrorism and corruption.

On May 29, the attorney general withdrew charges against diaspora-based Ginbot 7 leader Berhanu Nega and Oromo activist Jawar Mohammed, as well as their respective media organizations Ethiopian Satellite Television and Radio and Oromo Media Network.

Upon the end of the SOE and with the encouragement of Prime Minister Abiy, a number of new and returned diaspora media outlets were able to register and begin operations in the country.

Upon taking office Prime Minister Abiy stated that freedom of speech is essential to the country's future. NGOs subsequently reported that practices such as arrests, detention, abuse, and harassment of persons for criticizing the government dramatically diminished.

The government's arrest, harassment, and prosecution of journalists sharply declined and imprisoned journalists were released.

On July 5, the parliament legally removed the Oromo Liberation Front (OLF), ONLF, and PG7 from the list of terrorist organizations. Journalists, both state and private, were less afraid of reporting on these groups following their delisting.

Prime Minister Abiy invited diaspora media outlets to return as part of broader reforms to open up political dialogue. Major outlets and bloggers returned and began operations without incident.

After the lifting of the SOE, security forces' response to protests showed signs of increasing restraint. In July and August Federal Police and Addis Ababa police provided security to at least three large peaceful demonstrations staged without prior notification to the authorities in Addis Ababa.

The government, controlled by the EPRDF, called on all diaspora-based opposition groups, including those in armed struggle, to return and pursue nonviolent struggle. Virtually all major opposition groups, including OLF, Oromo Democratic Front, ONLF, and PG7, welcomed the request and returned to the country."

20. The Human Rights Watch report covering events of 2018 reported:

"After years of widespread protests against government policies, and brutal security force repression, the human rights landscape transformed in 2018 after Abiy Ahmed became prime minister in April. The government lifted the state of emergency in June and released thousands of political prisoners from detention, including journalists and key opposition leaders such as Eskinder Nega and Merera Gudina. The government lifted restrictions on access to the internet, admitted that security forces relied on torture, committed to legal reforms of repressive laws and introduced numerous other reforms, paving the way for improved respect for human rights.

Parliament lifted the ban on three opposition groups, Ginbot 7, Oromo Liberation Front (OLF), and Ogaden National Liberation Front (ONLF) in June. The government had used the proscription as a pretext for brutal crackdowns on opposition members, activists, and journalists suspected of affiliation with the groups. Many members of these and other groups are now returning to Ethiopia from exile.

Ethiopia released journalists who had been wrongfully detained or convicted on politically motivated charges, including prominent writers such as Eskinder Nega and Woubshet Taye, after more than six years in jail. The federal Attorney General's Office dropped all pending charges against bloggers, journalists and diaspora-based media organizations, including the Zone 9 bloggers, Ethiopian Satellite Television (ESAT), and Oromia Media Network (OMN), which had previously faced charges of violence inciting for criticizing the government.

OMN and ESAT television stations reopened in Addis Ababa in June, following calls by Prime Minister Abiy for diaspora-based television stations to return. Additionally, the government lifted obstructions to access to more than 250 websites. The restriction on access to the internet and mobile applications introduced during the 2015 protests was also lifted.

Many of Ethiopia's repressive laws used to silence dissent and restrict citizens' meaningful engagement – including the Charities and Societies Proclamation, the Media Law, and the Anti-Terrorism Proclamation – were being revised at time of writing.

Government officials often dismissed allegations of torture, contrary to credible evidence. But in a July speech to parliament, Abiy admitted that the government used torture and other unlawful techniques on suspects, acknowledging that such techniques amounted to terrorism by the state

Earlier this year, Ethiopia closed Makaelawi detention center, known for torture and mistreatment of political prisoners. After media reported significant

complaints of abuse from prisoners in other federal detention centers, the federal Attorney General's Office dismissed administrators of five facilities in July …

In July, the federal attorney general told media that there would be investigations into torture and mistreatment in detention facilities. In November, a number of high-ranking security officials were arrested due to their alleged involvement in human rights abuses in detention, according to the attorney general."

21. The Amnesty International report covers events of 2017/2018 and so is of limited use, being older than the other reports. It does, however, confirm the lifting of the state of emergency and the release of tens of thousands of prisoners.

22. It may be seen therefore from the above summary of country information that the judge's summary of paragraph 19 was a fair rendition based on the evidence before him and not restricted to that adduced by the respondent. Indeed, at paragraph 20, the judge confirms that he had read all the material submitted even if it had not been recorded in the determination.

23. I accept that the judge was, however, mistaken to say there were no political prisoners when he most probably meant to say there were no high profile political prisoners, I cannot agree that this omission could have impacted on his decision making when all the evidence on the changes in Ethiopia are taken into account. I note also that at paragraph 35 he refers to the release of prisoners and not to the release of *all* prisoners.

24. That leaves the complaint about the departure from country guidance. As the grounds and appellant's submissions themselves acknowledge, the country guidance is desperately in need of updating. It is some 13 years old. There have been monumental changes in Ethiopia since then, particularly since Prime Minister Abiy took control on 2 April 2018. Most significantly, PG7 is no longer classed as a terrorist organisation, it has, indeed, disbanded and ceased to exist and its leaders have committed themselves to a peaceful dialogue with the government. Not only have its officials returned to Ethiopia from Somalia, but political activists generally have been returning in large numbers to greater freedom and openness. Detention centres have been closed down, investigations have been launched into allegations of ill treatment and the government has apologised for the actions of its predecessors. Although the appellant also argues that the judge was wrong to find that these changes were durable, no good reason is given for why it is contended that they are not. The judge specifically addressed his mind to this issue at paragraph 35. whilst I accept that the CPIN report was published just months prior to the hearing, it reported on events that had taken place well before that and as can be seen from the summary of the country information above, the political scene in Ethiopia changed as soon as PM Abiy took power. The

judge was not therefore simply relying on evidence that was four months old.

25. The judge's reasoning is clear and cogent. He was adequately explained why he departed from country guidance and why he found that the appellant would not be at risk on return at the present time. Indeed, it would have been impossible for any First-tier Tribunal Judge to have found that the appellant could have succeeded in the context of the current evidence.

Decision

26. The decision of the First-tier Tribunal does not contain an error of law and it is upheld. The appeal is dismissed.

Anonymity

27. The First-tier Tribunal judge did not make an anonymity order and it does not appear that any such order was sought. Whilst the starting point for consideration of anonymity orders in this Chamber of the Upper Tribunal is open justice, I am mindful that paragraph 13 of the Guidance Note on anonymity confirms that it is the present practice of both the First-tier Tribunal and this Tribunal that an anonymity order is made in all appeals raising asylum or other international protection claims. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I therefore make an anonymity order.

28. Unless the Upper Tribunal or a court directs otherwise, no reports of these proceedings of 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. I do so in order to avoid a likelihood of serious harm arising to the appellant from the content of the protection claim.

Signed

R. Kekić

Upper Tribunal Judge

Date: 2 July 2020