



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

Appeal Number: IA/00300/2020

THE IMMIGRATION ACTS

**Heard at Manchester CJC (via Microsoft
Teams)
On 11 November 2021**

**Decision & Reasons
promulgated
On 22 November 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ASK

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Howard of Fountain Solicitors (Walsall).

For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Buckley ('the Judge'), promulgated following a hearing at Manchester on 1 February 2021, in which the Judge dismissed the appellant's appeal on protection and human rights grounds.
- 2.** The appellant is a citizen of Ethiopia born on 6 August 2020 who claimed asylum on the basis of a real fear of persecution due to his

political opinion. The Judge summarises the appellant's case at [23] of the decision under challenge.

3. Findings of fact are set out from [35]. Between [47-48] the Judge writes:

47. Although I accept some minor inconsistencies between the asylum interview and witness statement, and some potential speculation by the Appellant, when considering the evidence as a whole and the concessions made by the Respondent, the detailed account given by the Appellant, both about events in Ethiopia and Libya, his young age, his consistent evidence between his 2017 interview and statement and oral evidence and his lack of any embellishment to the core aspects of his claim, I am satisfied to the lower standard that he did distribute leaflets on the three occasions for his father, and his father was arrested in the circumstances described.

48. However, having accepted these core aspects of the Appellant's claim, on the Appellant's own evidence he was able to reside at a friend of his father's home for a significant period of time, 5 months, during which time he was able to remain there without any difficulties with the authorities. The father's friend, Saeed, lived with his wife in an area only one hour drive from where the Appellant lived with his father. The Appellant has provided no evidence that the authorities have visited the address or searched for the Appellant following his father's arrest. In the circumstances that the Appellant claimed that Saeed was also a Ginbot 7 member, in the absence of any difficulties for the Appellant whilst staying with Saeed and having accepted the Appellant's own evidence that he was not seen by authorities and his father, and not the Appellant was arrested, I am not satisfied to the lower standard that the Appellant was a suspect to the authorities for only distributing leaflets on three occasions.

4. The above is the core finding of the Judge, which undermines the appellant's claim to face a real risk on return.

5. From [49] the Judge considers the appellant's claim in the alternative, at its highest, namely on the basis of the appellant's claim that he was a Ginbot 7 supporter, did distribute leaflets on three occasions, and did become a suspect following his father's arrest. I find this to be a "belt and braces" approach by the Judge who having made the primary finding that the appellant was not at risk was considering the position in the alternative. Those are, however, *obiter* comments.

6. The conclusion having undertaken the exercise in the alternative is set out at [53] in the following terms:

53. Therefore, in considering the objective evidence regarding the political landscape in Ethiopia and the consistent evidence in relation to Ginbot 7 being taken off the national list of terror organisations, its leaders returning to Ethiopia from exile, and that the group itself no longer exists as a terrorist organisation, the Appellant cannot establish - even considering his claim at its highest - that he was a well-founded fear of persecution as a supporter of this group and cannot succeed in his asylum claim on this basis.

7. The Judge went on to consider the question of whether the appellant was able to succeed under the Immigration Rules pursuant to paragraph 276ADE, on the basis of whether significant obstacles to reintegration had been established, but at [54] concluding that the appellant had failed to make out an entitlement to succeed on this basis, either.

8. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal. The operative part of the grant being in the following terms:

2. It is argued that the Tribunal erred in:

- a. Refusing the Appellant's application made on the day of the hearing, to rely on additional background evidence, including a Human Rights Watch report dated 10/01/2021 Amnesty International reports dated January and May 2020. Grounds 1 and 2 are closely related. On this issue. It is arguable that the overriding objective was not applied to this issue as the relevance of the material does not appear to have been considered.
- b. Given the acceptance of his credibility in most of his claim and the NRM positive trafficking decision.

3. Both grounds are arguable. There is an arguable material error of law.

9. The Judge dealt with the application to adduce further evidence at [20] of the decision under challenge where it is written:

20. Mr Howard made an application to rely on late materials, uploaded at approximately 10:50 PM on the working day before the hearing; the application was opposed by Mr Hall on behalf of the Home Office. The materials consisted of 57 pages of additional background material, namely a recent Human Rights Watch Report dated 13 January 2021 and reports from Amnesty International dated January and May 2020. I was required to deal with admissibility as a preliminary matter, having full regard to the Tribunal Procedure Rules 2014 and the Presidential Practice Statement No.2 of 2020. In accordance with the furtherance of the overriding objective, and to ensure the appeal was conducted fairly and without any further delay, I determined that no satisfactory explanation was provided on behalf of the Appellant for the lateness of further background evidence being introduced the day before the hearing. Two of the three pieces of additional material were dated from 2020 and had been available for some time, and the most recent piece of evidence was dated almost three weeks before the hearing. As the material was provided substantially less than the 5 working days before the hearing, and I refused permission to the Appellant to rely on the material. There was no prejudice to the Appellant's case as he sought to rely on Country Guidance, the 2019 USSD Human Rights report on the recent June and September 2020 CPINs.

10. Directions had been given in this appeal for the evidence the parties were seeking to rely upon to be produced within a specified period, as identified by the Judge. This is not an arbitrary direction but one with the aim of ensuring that all the documents the parties are seeking to rely upon filed within good time to enable the Tribunal to be aware of such material and for proper disclosure to be made to the opposing party.

11. The criticism in the grant of permission that the Judge failed to take into account the relevance of the material is not made out as the Judge was clearly satisfied that there was sufficient information already available to enable the matter to be fairly determined.

12. At the Error of Law hearing there was a useful discussion as to whether there was anything in the material that the Judge had ruled inadmissible which would have made a material difference to the outcome, i.e. whether there was any specific point in the material not

included elsewhere which would have made a material difference to the outcome.

- 13.** The 2021 report contained a summary of the events within Ethiopia within the previous year, referring to the arrest of supporters of the OLF but I find there is merit in Mr Tan's submission, having looked at the evidence again, that there is nothing specific in relation to Ginbot 7 or previous membership of this group that would make a material difference or support the claim that the Judges decision amounts to procedural unfairness sufficient to qualify as a material error of law.
- 14.** The CPIN relied upon by the appellant and considered by the Judge does refer to problems 'on the ground' specifically in relation to the Oromo and issue of internal relocation. The information before the Judge clearly set out the fluid nature of the situation but does not establish that a person with the profile of the appellant, as found by the Judge, is at risk. The finding he will not be at risk has not been shown to be a finding outside the range of those reasonably open to the Judge on the evidence.
- 15.** The appellant had claimed to be a supporter of Ginbot-7 and to have distributed leaflets on his father's behalf on three occasions. There is nothing in the material already before the Judge or in the new material the appellant was seeking to rely upon that would undermine the clear finding made by the Judge, supported by adequate reasons, that the appellant will face no real risk on return.
- 16.** Even looking at the Judge's findings in the alternative, taking the appellant's case at its highest, in light of the lack of evidence of the appellant's links to a current organisation of concern to the authorities in Ethiopia, and in the absence of any credible *sur place* activities, no material error is made out in the Judge findings.
- 17.** In relation to the 276ADE point, the Grounds assert that in light of the positive credibility findings made, including that the appellant had been a victim of trafficking, the Judge failed to give adequate reasons as to why there would not be very significant obstacles to the appellant's return to Ethiopia.
- 18.** The Judge records at [54]:

54. It was also submitted on the Appellant's behalf that s276ADE applied and that there would be very significant obstacles to reintegration to Ethiopia. I have taken into account the Appellant's age when claiming asylum and that he has experienced some issues with his mental health in the UK, as detailed in the current circumstances form prepared by his social worker before the conducive grounds decision, and that he does have some vulnerabilities and is has been grieving for the loss of his father. However, and also taking into account that the Appellant has not provided an updating witness statement since 2017, I note that the Appellant has lived in Ethiopia for the majority of his life, speaks the language and is familiar with the customs and traditions. The Appellant has completed the ESOL Pre Entry Level 1, and can utilise these skills. On return to seek employment. The Appellant can return to access support from his father's friend, Saeed, and can apply for financial assistance through the Voluntary Return Scheme, to contribute to supporting him on his return to Ethiopia. The Appellant is a young, healthy adult male; and has not provided updating evidence regarding his circumstances in the UK, or likely circumstances on

return to Ethiopia that would support findings being made that there would be significant obstacles on return.

19. The Judge finds the appellant will be “enough of an insider” to enable him to re-establish himself within Ethiopia.
20. In relation to the positive conclusion grounds determination in relation to the appellant being a victim of modern slavery, the Judge was aware of this decision noting at [38] and at [39] that decision related to events in Libya to where the appellant travelled on his way to the United Kingdom rather than his experiences in Ethiopia.
21. The appellant fails to make out any legal error material to the decision to dismiss the appeal in relation to the findings concerning this aspect of the case either.
22. In conclusion, the appellant has failed to establish legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter.

Decision

23. **There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

24. The First-tier Tribunal made 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 12 November 2021