



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/11035/2019**

**THE IMMIGRATION ACTS**

**Heard at: Manchester      CJC      Decision & Reasons Promulgated  
(remote)  
On the 21<sup>st</sup> March 2022      On the 13<sup>th</sup> April 2022**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**KA  
(anonymity direction made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**DECISION AND REASONS**

1. The Appellant is a national of Ethiopia born in 1996. He seeks protection on the grounds that he faces persecution in Ethiopia for reasons of his political opinion.
2. The Respondent refused the Appellant's asylum claim on the 25<sup>th</sup> October 2019. It was accepted that the Appellant is an Ethiopian of Oromo ethnicity, and that he had, as a student in Oromia, protested against the Ethiopian government's "masterplan" for the expansion of Addis Ababa into Oromo territory. The Appellant's account of protest, 4 month-long detention and release was accepted as according with the country background evidence, and as it was internally consistent, it was therefore accepted as true. The Respondent did not however

accept that the Appellant had been subsequently arrested again, or that he was currently of interest to the Ethiopian security services. There had been a material improvement in the human rights record in the country since the coming to power of President Abiy Ahmed. Taking all of that into account the Respondent concluded that the Appellant had not demonstrated that he had a currently well-founded fear of persecution and the protection claim was refused.

3. The Appellant appealed and in December 2019 the matter came before First-tier Tribunal Judge AJ Parker, who agreed with the reasons for refusal and dismissed the appeal.
4. Permission to appeal to this Tribunal was granted by Upper Tribunal Judge McWilliam on the 14<sup>th</sup> May 2020. She considered it arguable that Judge Parker had made unclear findings and when the appeal came before Upper Tribunal Judge Pickup on the 3<sup>rd</sup> March 2021, Senior Presenting Officer McVeety conceded on behalf of the Secretary of State that this was indeed the case. Judge Pickup concurred, noting that the judges "reasons", as expressed in the decision, in fact amounted to a rehearsal of the Secretary of State's case rather than actual analysis of the competing arguments put. The decision of Judge Parker was therefore set aside by consent.
5. On the 23<sup>rd</sup> February 2022 the Principal Resident Judge of the Upper Tribunal signed a Transfer Order to enable the appeal to be remade by a judge other than Judge Pickup, who was unavailable for a further hearing. The matter has now come before me.
6. In the hiatus between the decision of Judge Parker and this one, the Upper Tribunal has handed down new country guidance on the current situation in Ethiopia: AAR (OLF - MB confirmed) Ethiopia CG [2022] UKUT 1 (IAC). That is the guidance that must be applied to this appeal. The relevant part of the headnote reads:

**Country guidance: OLF members and sympathisers (supporters)**

- (1) *MB (OLF and MTA - risk) Ethiopia CG [2007] UKAIT 00030 still accurately reflects the situation facing members and supporters of the OLF if returned to Ethiopia. However, in material respects, it is appropriate to clarify the existing guidance.*
- (2) *OLF members and supporters and those specifically perceived by the authorities to be such members or supporters will in general be at real risk if they have been previously arrested or detained on suspicion of OLF involvement.*
- (3) *Those who have a significant history, known to the authorities, of OLF membership or support, or are perceived*

*by the authorities to have such significant history will in general be at real risk of persecution by the authorities.*

- (4) *'Significant' should not be read as denoting a very high level of involvement or support. Rather, it relates to suspicion being established that a person is perceived by the authorities as possessing an anti-government agenda. This is a fact sensitive assessment.*
- (5) *Whether persons are to be excluded from recognition as refugees or from the grant of humanitarian protection by reason of armed activities may need to be addressed in particular cases.*

7. This guidance provides that there are two broad categories of Oromo individuals who will in general face a real risk of persecution in Ethiopia. The first are OLF members or supporters who have previously been arrested on suspicion of such political sympathies. In the second category are those who otherwise have a significant history of OLF membership or support that is known to the authorities. As to what 'significant' might mean in this context the panel in AAR make the following observations:

100. Before concluding, it is appropriate that we address one issue that did arise before us: what is the meaning to be ascribed to the term 'significant history' which appears in the country guidance?

101. The requirement that a claimant prove a significant history of membership or support for the OLF can be traced to the 2005 decision in HA (OLF Members and sympathisers - risk) Ethiopia where it appears, for the first time, in the penultimate paragraph. No elaboration is given as to the meaning of 'significant history', but we note that the Tribunal accepted the evidence set out in a Country Information and Policy Unit (CIPU) report of April 2004 as to the arbitrary detention and ill-treatment of 'thousands of OLF members and sympathisers'. In 2007, the evidential finding in HA was converted into formal guidance by the Tribunal in MB (OLF and MTA - risk). Again, the term is not defined. In that case the Tribunal accepted, without qualification, the evidence of country expert Dr Roy Love. It was his evidence that the *modus operandi* of the Ethiopian security forces was to arrest large numbers of civilians, accusing them of OLF involvement, only to release, then re-arrest in a cycle of harassment and ill-treatment. Others were kept in arbitrary detention for prolonged periods, often without hearing or cause shown, sometimes incommunicado. The Tribunal also considered a range of evidence identifying the use of torture by the authorities. We note that this accords with Prime Minister Abiy's subsequent admission to Parliament that the EPRDF engaged, for many years, in the systemic use of torture against perceived opponents. This was the context in which the previous Tribunal, whose guidance we are invited to uphold, employed the term.

102. We do not find the evidence before us to be materially different today. As the evidence outlined in the CPINs illustrate, many thousands continue to be arrested in sweeps, such as that which occurred in the aftermath of the murder of Hachalu Hundessa. These civilians are then subject to the same cycle of arrest/release/re-arrest as that identified by Dr Love over 15 years ago. Whilst it cannot be said that *any* level of support for the OLF will give rise to a well-founded fear of persecution, it cannot be said that 'significant' must denote a high-level or prominent connection to the party. We note Mr. Southerden's evidence on behalf of Amnesty International, consistent with other evidence placed before us, that "both formal arrest warrants and institutional as well as personal memory of individual officers plays a major role in determining who is perceived as possessing an anti-government agenda and therefore subject to suspicion." This local, and informal, approach is the context in which we must place the numbers of those arrested. We therefore conclude that 'significant' should not be read as necessarily denoting a very high level of involvement or support. Rather, it relates to suspicion being established that a person is perceived by the authorities as possessing an anti-government agenda. This is a fact sensitive assessment.

8. On the facts accepted by the Respondent, this Appellant clearly falls into category one: in 2015 he was arrested and detained for approximately four months on suspicion of sympathy for Oromo separatism, and specifically the OLF/Qeero youth movement. It was for this reason that the Respondent, on the 18<sup>th</sup> March 2022, communicated to the Tribunal and the Appellant that she would be withdrawing her refusal letter and granting the Appellant protection. That is a decision that I accept to be correct. For the avoidance of doubt I am further satisfied that on the facts the Appellant would also fall into category two: he would be returning to Ethiopia as an ethnic Oromo with a personal, and family, record of support for the OLF, since the evidence that his brother was "disappeared" for involvement in the OLF appears to have been accepted.
9. The appeal is therefore allowed on both protection and human rights grounds.

### **Decisions**

10. The decision of the First-tier Tribunal is set aside by consent.
11. The appeal is allowed on protection and human rights grounds by consent.
12. Having had regard to the new Presidential guidance on anonymity orders *Guidance Note 2022 No 2: Anonymity Orders and Hearings in*

*Private* I bear in mind the importance to be attached to the principle of open justice. I have nevertheless decided to make an anonymity order in this matter, in light of the fact that the Appellant still has family members in Ethiopia. Accordingly I make an order for anonymity under Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him, any of his witnesses or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Upper Tribunal Judge Bruce  
21<sup>st</sup> March 2022