



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006046

First-tier Tribunal Nos: PA/51591/2022
IA/04659/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 3 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

S K J
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Wood, Immigration Advice Service
For the Respondent: Mr Melvin, Home Office Presenting Officer

Heard at Field House on 6 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant, a national of Ethiopia, appealed against the Respondent's decision dated 31 March 2022 whereby the Appellant's asylum and protection claim was refused by the Respondent on 31 March 2022. The matter came before First-tier Tribunal Judge K Thapar who rejected the appeal on human rights grounds under the Refugee Convention and with reference to Article 8 of the ECHR.
2. Permission to appeal from the First-tier Tribunal was granted by Judge N Karbani on 19 December 2022 on the basis that there was an arguable error of law in terms of the Appellant being a perceived supporter of the OLF in Ethiopia by reference to the case law, which subsequently came into being, particularly Roba (OLF - MB confirmed) Ethiopia CG [2022] UKUT 00001 (IAC) and an arguable error that the Judge had failed to properly apply the case of YB (Eritrea) [2008] EWCA Civ 360 in determining whether the Appellant's sur place activities were reasonably likely to have come to the attention of the Ethiopian authorities.
3. The grounds of appeal assert that Judge Thapar had materially misdirected herself in law in assessing the risk on return to the Appellant from his sur place activities. The Appellant relied upon the role he had played in support of his support for the OLF whilst in Germany and that although he may or may not have made an asylum claim in Germany he came to the United Kingdom and engaged in further political demonstrations here.
4. Reliance therefore in relation to YB (Eritrea) [2008] EWCA Civ 360 was particularly addressing the possibilities and indeed strong possibilities that demonstrations in public against a regime, where for example a person could be named, filmed or photographed, were in consideration as the court noted it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information and for opposition groups. As the court noted the real question in most cases was what follows for the individual claimant. The criticism was that the Judge did not consider the guidance in YB (Eritrea) when assessing whether the sur place activities had come to the attention of the Ethiopian authorities irrespective of its genuineness and the Appellant's involvement or otherwise in pro-Oromo political activity.
5. The case of Roba gives helpful insight into the level of activity that may be engaged and its degree. There was no evidence of any action being taken against the Appellant's family or relatives in Ethiopia as a result of his activities in both Germany or the United Kingdom. I did not find that the Judge misdirected herself in law but reached a view she was entitled to do on the evidence as presented to her. It is to be recalled that if the Appellant was not a genuine supporter it may be immaterial as to whether he would be perceived to be because of his sur place activities.
6. I concluded that the grounds and general focus on the Appellant's sur place activities were not simply confined, as the Respondent might argue, to activities in the UK but the position was wherever the sur place activity took place it was found that the Appellant did not have a political profile in Ethiopia prior to entering the UK and there was no evidence showing that his attendance at demonstrations had come, or were likely to, to the attention of the Ethiopian authorities or any actions were being taken in consequence to his presence at such events as a result of photographs or use of the internet or posting messages which might be perceived to be disrespectful of the Ethiopian regime.

7. The Judge did not accept, for reasons given, that there was a risk to the Appellant from his sur place activities in the UK and I would conclude similarly the same reasoning applies to that in Germany.
8. The Judge did address the centrepiece or core of the Appellant's claim and I found those reasons cogent and sufficient to adequately address the claims.
9. The arrest of the Appellant's wife in 2002 is undocumented and I do not find the Judge was wrong in terms of excluding that from the considerations of the Appellant's risk on return.
10. Mr Wood sought to attractively present the argument, but I found on a fair reading of the Judge's decision that the Appellant's account had been assessed, examined and found wanting in material respects. I found the Judge's conclusions properly addressed the legal considerations. The Judge was entitled to maintain the view that the Appellant would be returning to Ethiopia as an individual without a political profile and the Judge found that the Appellant had not shown that he would be persecuted on the basis of his ethnicity alone. Accordingly, the Judge took into account the failure to claim protection in Belgium and France but that was not the driving force behind the rejection of claim to be at risk on return. The Judge took into account broader issues but concluded that the Article 8 claim had not engaged with sufficient weight and in evidence to form a basis for concluding that the Respondent's decision was out with Article 8 of the ECHR. Similarly, I found there was sufficient reasons to show why the claim was rejected. The heart of the appeal it seemed to me was fundamentally that there was a disagreement with the outcome of the appeal and was an attempt to reargue its merits.

DECISION

The First-tier Tribunal Judge made no material error of law. The appeal is dismissed. The First-tier decision stands.



Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 September 2023