



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001189
First-tier Tribunal Nos: PA/50685/2022
IA/01916/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

Mr H N A
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms J Pee (Solicitor)
For the Respondent: Ms R Arif (Senior Home Office Presenting Officer)

Heard at Field House on 4 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is appeal against the determination of First-tier Tribunal Judge Parkes, promulgated on 9th December 2022, following a hearing at Birmingham on 25th November 2022. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant

subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Ethiopia, who was born on 2nd May 1994. He appeals against the refusal of international protection on the basis that he was an OLF supporter, and detained for his activities, whereupon he was only released after a bribe being paid, and risks ill-treatment if returned back to Ethiopia.

The Appellant's Claim

3. The essence of the Appellant's claim is that he is a member of the Oromo community by ethnicity, which is well-known for its opposition against the current government of the TPLF ruling party. He is a supporter of the OLF and a member of one of its cells. He was arrested and detained twice, during which time he was tortured. He fled the country after he was released illegally upon the payment of a bribe. In the UK he claimed asylum on 24th April 2018, which was refused by a decision dated 11th February 2022 and his appeal against that decision was then dismissed by Judge Parkes on a basis which was tainted by material errors of law because the judge had misunderstood the evidence.

The Judge's Findings

4. The judge observed that "the Appellant was interviewed in Amharic and gave evidence in Oromo", which was not surprising because, "In countries where more than one language is spoken it is not unusual for citizens of the area to be fluent in more than one language and fluency", so that "whilst an indicator, it is not necessarily definitive of a person's ethnic or cultural origin" (paragraph 11). The judge then went on to say that, "There is no independent evidence from an expert in the analysis of the Oromo language ..." (paragraph 11). As a result, the judge concluded that, "The evidence of the languages the Appellant speaks does not take this case further forward" (paragraph 11). As for the question of the Appellant's culture, the judge observed that this was not a question of being formally educated on Oromo affairs because, "it would be a matter of how he would be brought up" (paragraph 12). The judge then went on to explain that there had been a discrepancy as to whether the Appellant had owned a shop or a market stall (paragraph 13). It was concluded that, "the Appellant's account has changed", and the judge held that he did "not accept the translation errors are responsible for what was recorded" (paragraph 16). The judge did not understand why the Appellant's mother had not been arrested and did not understand why the Appellant, who had travelled through Germany, had not claimed asylum there. As far as the Appellant's *sur place* activities were concerned, the judge held, "The activities are limited, the letter refers to a meeting in December 2019 and demonstrations in July 2020" (paragraph 24) but the judge concluded that "the Appellant is not known to the authorities and he can undertake the limited activities in the knowledge that it will not cause difficulties for those left in Ethiopia" (paragraph 25). In the end, the judge did not find the Appellant to be credible and rejected his appeal (paragraph 26).

Grounds of Application

5. The grounds of application state that the judge was wrong in stating that there was no independent expert evidence report in relation to the Oromo language (at paragraph 11) when there was. The judge was also wrong to have assumed the role of an expert himself in

concluding that the Appellant was not of Oromo ethnicity (at paragraph 26). The country expert in this case was an ethnic Oromo by birth, who spoke the Oromo language fluently, and interviewed the Appellant in his own language, but the judge dismissed his findings (at paragraph 9) in a way that could not be upheld. Indeed, the judge had wrongly found (at paragraph 11) that the Appellant was interviewed in Amharic when he was interviewed in the Oromo language. This was also the language in which the Appellant gave evidence at the hearing. It was only the Appellant's screening interview, which lasted a very short period of time, that was undertaken in Amharic because an Oromo interpreter was not available. After permission to appeal was refused by the First-tier Tribunal on 9th January 2023, the Upper Tribunal granted permission to appeal.

Submissions

6. At the hearing before me on 4th September 2023, Ms Pee, appearing on behalf of the Appellant, submitted that, "Not only was the Appellant interviewed during his substantive asylum interview in Oromo, but there was even a letter from the OLF branch in the UK confirming that he was Oromo and had participated in Oromo events and demonstrations in the UK. Moreover, the linguistic expert, whom the judge rejected, had stated that the Appellant was Oromo. The error therefore, was serious enough for the Tribunal to now make a finding of an error of law and remit the case back to the First-tier Tribunal. In fact, if the Appellant was not an ethnic Oromo he could not have been a member of the OLF, and if that could not have happened, then he would not have been arrested either. The fact was that the expert report was very detailed. The Amharic language is the main language in the schools, so that inevitably even Oromo children do learn Amharic, but the expert opinion was that the Appellant was speaking with a southern accent which was consistent with his being an Oromo and consistent with the region from where he came.
7. For her part, Ms Arif submitted that there was no error of law. The judge had made a detailed decision (at paragraph 11) dealing with the language issue and noting that the Appellant was interviewed in Amharic. The fact was that the language assessment is not the sole determinant of the issues before the judge. The judge does refer to the expert report because he observes that, "Taken overall I do not find the Appellant's account of events in Ethiopia to be credible, given the inconsistencies in his account and the explanations, which I have rejected" (paragraph 26).
8. In reply, Ms Pee submitted that the language expert had said that there was an authentic southern accent in the Appellant, and the judge had rejected that and placed himself in the position of an expert himself, which is not something that he was entitled to do. The Appellant's screening interview was a very short one, and this was conducted in Amharic, but his asylum interview and the evidence he gave at the hearing was in the Oromo language. His appeal statements were also in the Oromo language. Furthermore, the judge did not engage properly with the country guidance case of **Roba (OLF -MB confirmed) Ethiopia CG [2022] UKAIT 00001 (IAC)**. In the same way, the judge only referred to the expert report in passing and did not properly engage with it either. Indeed, he said that he was attaching no weight to it. In short, the judge had misinterpreted the evidence in front of him.

Error of Law

9. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law such that the decision should be set aside. My reasons are as follows. First,

as a matter of fact, the Appellant was interviewed during his substantive interview in the Oromo language and not the Amharic language and the judge erred in concluding otherwise.

10. Second, it is plain that the judge rejected the language expert's report summarily when it is arguable that he ought not to have done so. This is because the judge only referred (at paragraph 40) to the Appellant's statement that, "while I am not an expert in the Oromo language or any language for that matter", but did not refer to the rest of it which goes on to say that,

"I am fluent in the Oromo language and can identify someone who speaks Oromo as native speakers. I interviewed the Appellant on 24 November 2022, and I asked him several questions around his identity, the areas he grew up in, and some of the issues raised by the SSHD in the refusal letter. The interview was conducted in Afaan Oromo and a recording can be made available if required. The interview leaves no doubt that the Appellant is a native Oromo speaker who speaks the Oromo dialect common in South-West Oromia ..."

11. In this respect, I adopt the reasons given at paragraph 3 of the Upper Tribunal in granting permission.
12. Third, the judge did not attach adequate weight to the OLF letter which states that the Appellant "has participated on Oromo demonstrations that took place on 29th July 2020 in Birmingham, 3rd July 2020 in London ..." and that "He was holding placards, banners and chanting slogans ...".
13. Finally, this being so, there ought to have been a proper engagement with the country guidance case of Roba [2022] UKUT 00001.

Notice of Decision

14. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge, and this appeal is remitted back to the First-tier Tribunal pursuant to Practice Statement 7.2.(b) because the nature or extent of any judicial fact-finding which is necessary for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal. The appeal will be heard by a judge other than Judge Parkes.

Satvinder S Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18th October 2023