



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No.: UI-2023-004369

First-tier Tribunal No: PA/53872/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 6<sup>th</sup> of February 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**FJ (ETHIOPIA)**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Gary Dolan, Counsel instructed by Shawstone Associates

For the Respondent: Ms Alex Everett, Senior Home Office Presenting Officer

**Heard at Field House on 18 January 2024**

**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. The appellant has been granted permission to appeal from the decision of First-tier Tribunal Judge Hussain promulgated on 19 August 2023 (“the Decision”). By the Decision, Judge Hussain dismissed the appellant’s appeal against the decision of the respondent that he did not qualify for recognition as a refugee on the grounds of his political opinion or on the grounds of his ethnicity.

### **Relevant Background**

2. The appellant is a national of Ethiopia, whose accepted date of birth is 15 February 1992. He entered the United Kingdom on 22 June 2020 hidden in the back of a lorry, and he claimed asylum on the same day. He was given a screening interview, and he completed a Preliminary Information Questionnaire on 1 December 2021. He made a witness statement in support of his claim on 8 December 2021, and he attended two substantive asylum interviews on 23 May 2022 and 25 July 2022 respectively. His solicitors made further representations on his behalf on 29 July 2022.
3. In the refusal decision dated 8 September 2022, the respondent accepted that he was of Oromo ethnicity; that he was a supporter of the Oromo Liberation Front (OLF) and that he had been involved with the OLF to a low level whilst in Ethiopia. But since leaving Ethiopia in 2016, he had not been involved with the OLF at all.
4. It was not accepted that he would have problems in Ethiopia due to his previous support of the OLF. Due to the inconsistencies in his account, and especially his failure to mention his support for the OLF and his claimed subsequent arrest and beating in his screening interview, it was not accepted that he would have problems in Ethiopia as a result of supporting the OLF.
5. With regard to section 8 of the Asylum & Immigration (Treatment of Claimants etc) Act 2004, it was noted that he had failed to claim asylum in France despite living in France for two years before arriving in the UK. He had not provided an explanation as to why he failed to claim asylum in France, and it was therefore concluded that his behaviour was one to which section 8(4) applied.
6. Consideration had been given to his claim that he should be allowed to stay in the UK on medical grounds. He said that he had been receiving treatment for stomach problems, heart problems, urine problems, ear problems and indigestion, headaches, and kidney problems. The evidence that he had provided did not indicate that treatment was unavailable in Ethiopia or that he would lack access to such treatment. Consideration had also been given to his claim that he should be allowed to stay in the UK based upon his right to mental well-being. He had provided no credible evidence of his medical history that supported his claim that without treatment he posed a danger to himself or others. It was also noted that during his asylum interview he stated that he had no thoughts of self-harm

or suicide. It was therefore not accepted that he was at real risk of self-harm if returned.

7. In his signed appeal statement dated 23 December 2022, the appellant denied that there were inconsistencies in his account, and he went over it again in some detail. He had fled to his father's friend in the Doloicha district. This friend of his father found him a job with a man named Kusa, for whom he worked as an assistant driver for three months. It is while he was working for this man that the police stopped them in Bale and he was accused of carrying material. He was arrested by the police and in detention he was severely beaten and his teeth were broken, and *"at that place my ears were cut off"*. They kept torturing him a lot, asking where he was going to take the weapons. Later, the owner of the van secretly paid off the guards and took him out of the prison.
8. Dr Olowookere prepared a combined psychiatric and scarring report dated 3 February 2023. With respect to the incident in Bale, Dr Olowookere recorded the appellant as telling him that the police said that there was a gun in the car. They beat him and punched him and even stood on his neck, and he lost another tooth on his left cheek. He was held in a cell for two months, and was released on payment of a bribe by the owner of the van.
9. On a mental state examination, the appellant was very anxious. He reported flashbacks, nightmares and intrusive thoughts. He preferred to isolate himself and sometimes felt suicidal. But there were no psychotic symptoms.
10. Dr Olowookere went on to discuss various lesions on the appellant's body which the appellant attributed to the ill-treatment he had received while in detention. One of the lesions was a healed scar on the appellant's left ear. The appellant said that he had sustained the injuries which resulted in the scar on his left ear when someone stood on his neck. As with all the other lesions observed by Dr Olowookere, he opined that the scar was consistent with the account given by the appellant as to how it was caused.
11. He diagnosed the appellant as suffering from a depressive disorder and from a post-traumatic stress disorder.
12. He found that the trauma experienced by the appellant had caused him bodily harm, from the loss of his tooth to scars on his body. His experiences also led him to suffering from nightmares, flashbacks, intrusive thoughts, isolating from people and suicidal thoughts.
13. On the topic of his capacity to engage with legal proceedings, he opined that the appellant had the capacity to take a meaningful part in the interview and appeal process.
14. The appellant's case on appeal was set out in a skeleton argument settled by his solicitors, which was uploaded to the CCD file on 3 March 2023. They drew attention to the report from Dr Olowookere at pages 5-26

of the appellant's bundle. They submitted that this showed that the appellant was a vulnerable witness who suffered from scars that were attributed to the torture that he was subjected to. He also suffered from PTSD as a result of the traumatic treatment he had received at the hands of the authorities in Ethiopia. Photographs of his persecution were at pages 34-41 of the bundle.

### **The Decision of the First-tier Tribunal**

15. The appellant's appeal came before Judge Hussain sitting at Taylor House on 30 June 2023. Both parties were legally represented, with Mr Dolan of Counsel appearing on behalf of the appellant.
16. As is recorded in the Decision at para [9], at the commencement of the hearing Mr Dolan requested that the appellant be treated as a vulnerable witness because of the diagnosis of PTSD. There was no objection from the Presenting Officer, and accordingly the Judge indicated that the appellant should be treated as a vulnerable witness.
17. At paras [14] to [22] of the Decision, the Judge summarised the appellant's oral evidence. In cross-examination, the appellant recalled being assessed about his scarring and that the doctor who assessed him was a psychiatrist. Prior to that, he had gone to the GP for treatment. He was asked why he had not provided his GP records relating to his medical condition. He replied that he had not been asked to provide them. He had seen his GP for his physical health and for his sleeplessness.
18. The Judge's findings began at para [26]. At para [29] he found that the appellant had not provided a reasonable explanation as to why he did not seek asylum on the way to this country, and as a result he found that his credibility was deemed damaged. But the deemed damage to his credibility was not determinative of his overall credibility. He had to carry out an assessment of each aspect of the appellant's claim. He had done so, and for that reasons set out below, he found that the appellant was not a credible witness.
19. Firstly, while he had claimed in his screening interview that he was taken to Court following his arrest for transporting weapons, he had not repeated this claim in his subsequent witness statements. Nor had he provided any documentary evidence of his attendance at Court. Secondly, in his oral evidence, he was clear that the reason for his arrest was that his vehicle was found to be carrying weapons illegally, whereas in his statement of December 2021 he said that his arrest on 3 July 2016 was on suspicion of supporting the militia. Thirdly, the respondent noted that the appellant's claimed arrest of April 2014 following his attendance at a demonstration was vague. At paragraph 4 of his statement of December 2022, the appellant said that the authorities arrested him at home two months after the demonstration through use of video footage. However, in oral evidence, he claimed that, because his father was a member or supporter of the OLF, he was being monitored.

20. The Judge also noted that in his statement of December 2021 the appellant said that after his release, following the six months' detention, his movements were being followed. But a year later, in his December 2022 statement, he elevated that claim to the Government authorities calling him in for interrogation from time to time: "*That clearly is an embellishment.*"
21. At para [36], the Judge said that, to support his claim, the appellant had produced a report by Dr Olowookere. He referred to having special experience in diagnosing and managing mental disorders, and yet in paragraph 5.1 he had accepted instructions to produce a scarring report as well as a psychiatric report: "*Quite where and how he obtained qualifications to report on scarring was unexplained.*"
22. At para [37], the Judge noted the discrepancy between what was said about the left ear in the scarring report, and the fact that in paragraph 8 of his December 2022 statement the appellant had stated that in addition to having a tooth broken, his ears were "*cut off*". The Judge observed that the appellant had adopted this statement in open court as his evidence in chief "*without any correction.*"
23. In commenting on the loss of the appellant's teeth, the report referred to the appellant's right tooth, which he told the expert was lost as a result of being beaten. Yet the expert stated that this scar was common after an injury by a blunt or sharp weapon, or a fall on a rough surface. The appellant in his overall evidence did not refer to being struck with any weapon. Indeed, he gave very little detail as to how he came to lose his tooth.
24. The Judge concluded, at para [38], that looking at the totality of the evidence, he could not be satisfied that the appellant had given a truthful account of his experiences with the authorities in his home country.
25. The Judge found, at para [39], that the appellant had not demonstrated a real risk of being persecuted or otherwise ill-treated if he was returned to Ethiopia, because he did not accept that the appellant was the subject of any adverse interest in Ethiopia previously.
26. At para [40], the Judge said that he noted the appellant's attendance at Anti-Ethiopian Government demonstrations in this country. It seemed to him likely that the appellant did so in order to bolster an otherwise unmeritorious claim. At para [41], he said that he had not been presented with any evidence that the Ethiopian authorities monitored demonstrations in the UK.
27. At para [42], the Judge concluded that he was not satisfied that the appellant had shown that he was a refugee because of his *sur place* activities in the UK. At para [43], the Judge said that in relation to the appellant's mental health condition and human rights claim, the respondent had dealt with those adequately. In his view, the appellant was unlikely to succeed on those grounds.

28. The Judge went on to dismiss the appeal on asylum, humanitarian protection and human rights grounds.

### **The Grounds of Appeal to the Upper Tribunal**

29. Mr Dolan settled the grounds of appeal to the Upper Tribunal. He submitted that the judgment was unsafe because, firstly, the Judge had failed adequately or at all to consider the psychiatric report of Dr Olowookere; secondly, he had failed to apply the Joint Presidential Guidance Note No.2 of 2010; thirdly, he had adopted an erroneous approach to the scarring evidence; fourthly, he had failed to consider the evidence in the round by (a) applying section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 separately and before considering the other evidence, and (b) by compartmentalising the evidence of the appellant's acknowledged OLS support and his participation in demonstrations in the UK; and fifthly, by failing to apply the relevant Country Guidance.

### **The Reasons for the Initial Refusal of Permission**

30. On 22 September 2023, First-tier Tribunal Judge Chohan refused permission as there was nothing to suggest that the Judge had failed to consider adequately the psychiatric report. It seemed that the Judge had questioned the expert's qualifications to produce the scarring report. However, having made that comment, the Judge had gone on to consider, in some detail, the scarring report. It was true that the Judge had not specifically referred to the relevant Country Guidance case, but that was not detrimental to the decision as a whole. This was because although it had been accepted that the appellant had been a member or supporter of the OLF in Ethiopia, the Judge concluded that he had never been of any adverse interest.

### **The Reasons for the Eventual Grant of Permission to Appeal**

31. In the renewed application for permission to appeal, Mr Dolan submitted that it was clear that Judge Hussain had failed adequately or at all to consider the PTSD diagnosis of Dr Olowookere, and the fact that PTSD required a "*traumatic trigger*"; or to consider whether and how the appellant's condition affected his evidence. The latter failure constituted a failure properly to treat the appellant as vulnerable.
32. In his decision dated 11 December 2023, Upper Tribunal Judge Sheridan did not restrict the grounds that could be pursued, but he specifically identified as arguable the grounds relating to the psychiatric evidence. He considered that the Judge had arguably erred by failing to make a finding on whether he accepted the expert's evidence about the appellant suffering from PTSD. This was arguably material because if this evidence was accepted, it arguably should have been considered as part of the overall assessment of the credibility of the appellant's account.

### **The Hearing in the Upper Tribunal**

33. At the hearing before me to determine whether an error of law was made out, Mr Dolan developed his renewed grounds of appeal. He agreed that the ground identified by Upper Tribunal Judge Sheridan was probably the appellant's best point.
34. On behalf of the respondent, Ms Everett adopted a similar line to that taken by Judge Chohan when refusing permission to appeal. She submitted that the Judge's failure to follow the guidance given in the Joint Presidential Guidance Note No.2 of 2010 was not material on the particular facts of this case. Looking at the judgment holistically, she submitted that the Judge had directed himself appropriately, and had reached sustainable findings.
35. After briefly hearing from Mr Dolan in reply, I reserved my decision.

### **Discussion and Conclusions**

29. Before turning to my analysis of this case, I remind myself of the need to show appropriate restraint before interfering with a decision of the First-tier Tribunal, having regard to numerous exhortations to this effect emanating from the Court of Appeal in recent years.
30. I find it convenient to deal with the grounds of appeal in reverse chronological order.
31. Ground 5 is that the Judge failed to consider the Country Guidance case of *Roba (OLF-MB confirmed) Ethiopia CG* [2022] UKUT 00001 (IAC). While the Judge did not refer to this Country Guidance authority, he did not thereby err in law, as he did not make any findings that were inconsistent with it.
32. Ground 4 is that the Judge failed to consider the evidence in the round. Mr Dolan submits that the Judge erred in law in considering the section 8 issue first, rather than by "*throwing it into the mix.*" I consider that the Judge was not bound to follow a particular order in which he addressed the issues which bore upon the appellant's credibility. It was pre-eminently a matter for him how much weight he chose to attach to the appellant's failure to claim asylum in a safe country before reaching the UK, and he did not misdirect himself in taking the appellant's failure to claim asylum in a safe country as a starting point.
33. The other alleged failure to consider the evidence in the round is said to be manifest in the Judge only considering the evidence of the appellant's attendance at OLF demonstrations in the UK towards the end of his analysis, after he has already addressed and made findings on the appellant's credibility with respect to his claim of past persecution. Mr Dolan also takes issue with the Judge's finding that it is likely that the appellant has only attended demonstrations in order to bolster an otherwise unmeritorious claim. He submits that it is unclear why attendance at demonstrations by an acknowledged OLF supporter would not be genuine.

34. As is apparent from the refusal decision, the appellant did not advance a *sur place* claim originally. The case which the respondent addressed in the refusal decision was only that the appellant had a previous history of detention by the Ethiopian authorities on suspicion of OLF involvement. It was not his case that he had continued to be involved with the OLF since leaving Ethiopia in 2016 and/or since arriving in the UK. As the appellant only advanced his *sur place* claim after the refusal decision, it was clearly open to the Judge to find that the appellant's recent *sur place* activities were likely to have been done for the purpose of bolstering his claim, rather than because he was a fervent supporter of the OLF.
35. The Judge correctly directed himself that the issue was whether the appellant had thereby succeeded in engendering an adverse risk profile for himself, and the Judge gave adequate reasons at para [41] for finding that he had not.
36. As to Ground 3, the Judge overlooked the fact that Dr Olowookere had worked for the past nine years as a forensic medical examiner. Accordingly, the Judge had no reason to suppose that his medico-legal experience and expertise did not include, as he stated in his CV, "*forensic assessment of scarring and physical injuries*".
37. However, I do not consider that the Judge's mistake is material, as the Judge engaged with the scarring report, and he accurately summarised its thrust, which was that the lesions attributed by the appellant to ill-treatment while in detention were consistent with the mechanism of injury described by the appellant - but they were also consistent with other causes, such as falling on a rough surface.
38. Turning to Grounds 1 and 2, it is precisely because the scarring report is of limited probative value that the psychiatric report assumes a greater significance. Dr Olowookere made a clear diagnosis that the appellant was suffering from PTSD as a result of the trauma which he had suffered while in detention.
39. It is clear from the ASA that it was part of the appellant's case that his account of past persecution was supported by both parts of the medico-legal report. Conversely, in the respondent's review, the respondent gave reasons as to why the diagnosis of PTSD should not be accepted.
40. The Judge accepted that the appellant should be treated as a vulnerable witness for the purpose of the hearing, and he thereby complied with the first part of the Guidance.
41. But when it came to assessing the appellant's credibility, the Judge failed to consider whether the diagnosis of PTSD stood up to scrutiny, or whether it should be rejected for the reasons given in the respondent's review. The Judge also did not comply with the second part of the Guidance, which relates to the assessment of the evidence of a vulnerable witness.



42. As well as potentially bolstering the credibility of the claim of past persecution, the diagnosis of PTSD was also material to the credibility assessment in another respect, which is identified in paragraph [14] of the Guidance as follows:

*“Where there were clear discrepancies in the oral evidence, consider the extent to which the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity.”*

43. By way of example, the Judge’s discussion of the scarring report makes reference to a clear discrepancy between the appellant showing the doctor an injury to his left ear, whereas he has previously claimed in a witness statement that he had had both his ears cut off. The Judge appears to treat this discrepancy as damaging the appellant’s credibility, without asking himself whether the discrepancy and/or failure to correct the witness statement is a manifestation of the appellant’s vulnerability.
44. Paragraph 10.3 of the Guidance says that when assessing evidence, the decision-maker should take account of potentially corroborative evidence. This plainly applies to the diagnosis of PTSD.
45. Paragraph 15 of the Guidance states that the decision should record whether the Tribunal has concluded that the appellant (or a witness) is a child, vulnerable or sensitive, and *“the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it”*.
46. The Judge plainly failed to record in his decision the effect that he considered the identified vulnerability had in his assessment of the appellant’s evidence.
47. While non-compliance with the Guidance may not be material in every case, I am satisfied that it is material in the present case.
48. The upshot is that the decision of the First-tier Tribunal is vitiated by procedural unfairness, such that the decision must be set aside in its entirety, with none of the findings of fact being preserved.

### **Disposal**

49. The nature of the error is such that the appellant has been deprived of a fair hearing in the First-tier Tribunal, and so the appeal must be remitted to the First-tier Tribunal for a fresh hearing, with none of the Tribunal’s findings of fact being preserved.

### **Notice of Decision**

The decision of the First-tier Tribunal is vitiated by a material error of law, such that the decision must be set aside in its entirety and remade.

### **Directions**

This appeal will be remitted to the First-tier Tribunal at Taylor House for a fresh hearing before any Judge apart from Judge Hussain.

**Anonymity**

The First-tier Tribunal made an anonymity order in favour of the appellant, and I consider that it is appropriate that the appellant continues to be protected by anonymity for the purposes of these proceedings in the Upper Tribunal.

Andrew Monson  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
5 February 2023