Upper Tribunal
(Immigration and Asylum Chamber) Case No: UI-2023-005019

First-tier Tribunal No: PA/55626/2022

THE IMMIGRATION ACTS

Decisions and Reasons issued

5th March 2024

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr MISGANA ASEFA GETAHUN
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K Shah, Solicitor
(Shawstone Associates)
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at FIELD HOUSE on 23 February 2024

DECISION AND REASONS

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Introduction

1. The Appellant appealed with permission granted by Deputy Upper Tribunal Judge Shepherd on 9 January 2024, against the decision of First-tier Tribunal Judge Hussain who had dismissed the appeal of the Appellant against the refusal of his protection and human rights claims. The decision and reasons was promulgated on 2 October 2023.

2. The Appellant is a national of Ethiopia, born on 13 February 1994, i.e., he was 29 years of age at the date of the First-tier Tribunal hearing. He arrived in the United Kingdom by clandestine means on 3 March 2016 and claimed asylum. His appeal against the refusal of his claim was dismissed by First-tier Tribunal Judge Gladstone on 11 April 2017. By 22 September 2017 the Appellant was appeal rights exhausted. Nevertheless he remained in the United Kingdom and made further submissions dated 31 March 2021. Those were refused on 18 November 2022, giving rise to the appeal heard by Judge Hussain.

3. The Appellant claimed that he faced persecution if he were returned to Ethiopia, primarily because of his political opinion. He claimed he was a member of Jinbot 7 (G7) and a supporter of the National Amhara Movement (NAMA).

4. Judge Hussain noted that Devaseelan* [2002] UKIAT 702 applied to the Appellant's previous asylum appeal. Judge Gladstone had found that the Appellant's claim as formulated in 2017 lacked credibility because of various inconsistencies, contradictions and embellishments. Judge Hussain considered whether the Appellant had produced sufficient fresh evidence to cause him to depart from Judge Gladstone's findings. He found that he should not. He found that the Appellant had not been of adverse interest to the Ethiopian authorities before he came to the United Kingdom. No weight could be given to the documents which the Appellant produced with his fresh claim, which were contrived to support his story and which were not credible. There was some evidence that the Appellant had participated in anti-government demonstrations in the United Kingdom, but no evidence reaching the standard of reasonable likelihood that his low level participation would

thereby place him at real risk on return. Hence the fresh appeal was dismissed.

5. Permission to appeal was refused by Judge Handler on 7 November 2023. However Deputy Upper Judge Shepherd granted permission to appeal on the grounds that it was arguable that Judge Hussain had erred by making findings based on his own experience in preference to the country background evidence. Even then it was unclear to which country he was referring to and how that was relevant. It was arguable that the judge had not taken country background evidence or country guidance into account, including Roba (OLF – MB confirmed) Ethiopia (CG) [2022] UKUT 1 (IAC), which the judge should have considered, whether he had been expressly referred to it or not. Further, it was arguable that the judge had not indicated what weight, if any, he attached to the Appellant's expert medical report. Moreover, the judge had not approached the evidence holistically.

Submissions

6. Ms Ahmed for the Respondent had informed Ms Shah that the error of law appeal would not be contested by the Respondent. The tribunal indicated that it was not willing to accept that concession and required to hear argument before reaching a decision.

7. Ms Shah for the Appellant relied on the grounds of onwards appeal and the grant of permission to appeal, as summarised above. The Appellant's case relied on his perceived political opinion. The judge's decision was unclear, especially as to the view the judge took of the medical report. The Appellant's *sur place* activities and their likely consequences had not been properly considered. The decision was wrong and should be set aside.

8. Ms Ahmed wished to add nothing.

No material error of law finding

9. At the conclusion of submissions the tribunal stated that it found no material error of law. The tribunal reserved its reasoned decision, which now follows. The tribunal rejects the submissions as to material error of law made on behalf of the Appellant. In the tribunal's view, the three errors asserted to exist in the decision are misconceived and are based on a failure to read Judge Hussain's decision as a whole and to set the relevant facts into their proper context.

10. The context of the appeal was plain. As Judge Hussain pointed out, the Appellant had previously raised an appeal based on his claimed political opinion and the expression of that political opinion, which had been dismissed on credibility grounds. The Appellant's fresh claim relied on new political affiliations and new documentary evidence which Judge Hussain examined with great care.

11. Contrary to the submission made on the Appellant's behalf, the judge's reference to his experience of documents similar to those produced by the Appellant at [44] of his decision was not introducing new expert evidence of his own but rather underlining the inherent unreliability of the document the Appellant had advanced as being a warrant of arrest issued by the Ethiopian police. A detailed discussion of that document followed in which the judge set out the its key elements when explaining why he gave it no weight, and why he rejected the country expert's opinion which had given it general support. The judge gave a number of sound reasons for finding that the contents were not credible, including its "story-telling" narrative and the difference between the Appellant's translated version of the document and the version quoted by the expert. All that was done while considering the Appellant's case as a whole, having started with the Appellant's medical evidence.

12. The judge examined the Appellant's other documents with similar care and close attention, again giving sound reasons why he differed from the Appellant's country expert's opinion: see, e.g., [41] and [43] of the judge's decision.

13. It was submitted that Judge Hussain made no reference to Roba (above) but should have done. Roba in the first instance was addressed to OLF claims from Ethiopia, which was no part of the Appellant's case. It was not in dispute in the Appellant's appeal that opposition activists could face danger in Ethiopia and the judge did not depart from that position, so there was no error there.

14. The wider principles outlined in Roba were as follows:

> 1. General application of country guidance
> (1) The treatment of country guidance as a presumption of fact means that it will be for the parties seeking to persuade the Tribunal to depart from it to adduce the evidence justifying that departure.
> (2) An assessment as to whether to depart from a CG decision is to be undertaken as to:
> (i) whether material circumstances have changed; and
> (ii) whether such changes are well established evidentially and durable.
> (3) The law, and the principle, are not affected by the age of the CG decision. It may be that as time goes on, evidence will become available that makes it more likely that departure from the decision will be justified. But the process remains the same, and unless in the individual case the departure is shown to be justified, the guidance contained in the CG decision must, as a matter of law, be adopted.
> (4) If the parties fail to abide by their general duty in respect of identifying extant country guidance, it remains for the Tribunal to consider such guidance and to follow it.
> (5) Any failure by the Tribunal to apply a CG decision unless there is good reason, explicitly stated, for not doing so might constitute an error of law in that a material consideration has been ignored or legally inadequate reasons for the decision have been given.
> (6) A party that before the First-tier Tribunal has failed to address extant country guidance or has failed to demonstrate proper grounds for departure from it is unlikely to have a good ground of appeal against a decision founded on the guidance.

15. There is nothing in Judge Hussain's decision to suggest that he failed to follow the correct principles for the application of country guidance. The Appellant's appeal, like his previous appeal, turned on his credibility, not on country guidance as such.

16. It was further argued that the judge took the wrong approach to perceived political opinion and to the issue of whether the Appellant's *sur place* activities, such as they were, were reasonably likely to be monitored. Having referred earlier to BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC) when summarising the reasons for refusal letter, Judge Hussain examined risk on return in detail at [55] to [64]. After discussing the country expert's report, he concluded that there was no evidence that surveillance evidence acquired in the United Kingdom was used to persecute government opponents in Ethiopia.

17. It was submitted that the judge failed to have regard to the observations made in WAS (Pakistan) [2023] EWCA Civ 894 when setting aside the judgment of the Upper Tribunal:

> "… on this aspect of the case, the UT erred in law by losing sight of the fact that direct evidence about 'the level of and the mechanics of monitoring' in the United Kingdom is unlikely to be available to an asylum claimant or to a dissident organisation…"

18. Those observations were made in relation to the evidence in an appeal concerning a political opinion asylum claimant from Pakistan. The difference between that case and the present appeal is that evidence *was* put forward on the Appellant's behalf of monitoring to which the judge gave sustainable reasons for giving no weight. As well as the country expert's opinion, there were documents describing the Appellant's *sur place* activities which the judge considered deserved no weight as they had been tailored to advance the Appellant's case: see, e.g., [53] of the decision.

19. The remaining complaint advanced on the Appellant's behalf was that Judge Hussain had not explained what view

he took of the medical evidence. The medical report was discussed by the Respondent at length in the reasons for refusal letter. As was noted, the expert considered that many of the scars were consistent with the Appellant's claims but that there were other possible explanations for some of the scarring which the Appellant claimed were from his mistreatment in Ethiopia. The judge stated at [40] of his decision: "Even if I take the report as being favourable to the Appellant, when these are set against the evidence that is against him, I find that applying the appropriate standard of proof, I cannot come to any conclusion other than to find that the Appellant has not presented a truthful account of his experiences in Ethiopia." In other words, Judge Hussain found that the medical report taken at its highest was insufficient to overcome the numerous credibility and reliability problems with the Appellant's evidence which the judge went on to explain in the remainder of his decision. This was an example of the application of anxious scrutiny to the case. The judge's finding was clear.

20. Having considered the submissions, the tribunal finds that the grounds advanced on the Appellant's behalf were at best an expression of disagreement. None of the adverse conclusions the very experienced judge reached were in the least surprising. The judge set out his reasoning fully and clearly when dissecting a weak repeat appeal. The tribunal finds that there were no material errors of law in the decision challenged. The onwards appeal is dismissed.

Notice of decision

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.

The appeal is dismissed_

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed R J Manuell **Dated** 27 February 2024
Deputy Upper Tribunal Judge Manuell