



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/03165/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 19 January 2016**

**Decision & Reasons Promulgated
On 15 February 2016**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**HTB
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Chakmakjian, instructed by Lambeth Law Centre
For the Respondent: Ms E Savage, Senior Office Presenting Officer

DECISION AND REASONS

(Delivered orally on 19 January 2016)

Anonymity

I maintain the anonymity order made by the First-tier Tribunal, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless the Upper Tribunal or other appropriate Court or Tribunal orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the

Appellant. This prohibition applies to, amongst others, all parties and their representatives.

Introduction

1. The appellant is a national of Ethiopia born in 1974. She appealed to the First-tier Tribunal against decision made on 9 February 2015 to remove her pursuant to s.47 of the Immigration, Asylum and Nationality Act 2006. On the same date the Secretary of State refused to grant her asylum or humanitarian protection.
2. The appellant entered the United Kingdom on 7 March 2010 on a false passport, with entry clearance as a domestic worker conferred until February 2011. She claimed asylum on 11 June 2010. That application was refused the following month. An appeal to the First-tier Tribunal was thereafter pursued, but this was dismissed by First-tier Tribunal Judge Kamara in a decision of 20 August 2010. At paragraph 19 thereof Judge Kamara concluded:

“... that there is no aspect of the appellant’s account which I accept, other than her nationality.”
3. The appellant subsequently submitted fresh representations, incorporating a plethora of documentation in support of the assertion that the account she had given as to the circumstances which led to her claiming asylum was a truthful one. Included within the evidence relied upon were reports from (i) Dr Roy Love, who identifies himself as an expert in the circumstances appertaining in Ethiopia and Eritrea, and (ii) Lucy Kralj, an associate clinician with specialism in “Trauma and Gender Based Violence” – the report relating to aspects of the appellant’s mental health.
4. These representations were considered by the Secretary of State in the decision of 9 February 2015 but, as identified above, she refused to grant the appellant leave to remain.

Discussion

5. The appeal before the First-tier Tribunal was heard by First-tier Tribunal Judge Wylie on 3 July 2015 and dismissed on all grounds in a decision promulgated on 26 August 2015. Permission to appeal to the Upper Tribunal was subsequently granted by First-tier Tribunal Judge Brunnen in a decision of 18 December 2015, thus the matter comes before me.
6. The core of appellant’s first ground relates to the expert evidence provided by Dr Love. It is said in the grounds that Dr Love’s report specifically addresses the following aspects of the appellant’s evidence, that had been found not to be plausible by Judge Kamara:

“[a] The Applicant’s inability to name the leader of the EPPF was not inconsistent with her being a member, as it would not be easy to come by for grassroots activists in Ethiopia [para. 5.3 – 5.4, 22.08.2011 report];

[b] It was not inconsistent that the Applicant did not mention AFD, as AFD would not be widely known or have local impact for ordinary members or supporters of EPF living in Ethiopia [para. 6.1 - 6.2...].

[c] It was plausible that the Applicant carried out activities in Addis Ababa, as it would be surprising if there was no EPPF network in the city [para. 72...].

[d] The Applicant's decision to join EPPF after the death of her husband is consistent in the context of the cultural practices in Africa [para. 18.2.1...].

[e] It is credible the Applicant's husband would have been detained and returned as described [para. 10.1 - 11.4...].

[f] The Applicant's account of her activities with EPPF were "*consistent with how similar banned groups recruit and function*" [para. 7.2 - 7.3...]."

7. Judge Wylie properly took the determination of Judge Kamara as her starting point (see Devaseelan*), and having done so she concluded that the appellant was not credible in her assertions as to the events which she stated had occurred in her home country.

8. The following passages from the Judge Wylie's decision are notable:

"46. The issue is whether there are additional facts now available which support the appellant's claim that she would suffer persecution if returned to Ethiopia because of her political association.

47. The finding of the First-tier Tribunal Judge was that the appellant's account of her circumstances which she claimed led her to leave Ethiopia and her account of her circumstances thereafter was an invention from beginning to end; her account was inconsistent with the background information and contained a number of implausible matters."

9. Thereafter the Judge Wylie found:

"60. Having found that the appellant is not a member of the EPPF in the United Kingdom, and having not accepted that she was a member in Ethiopia, I do not consider that she had any risk on return to Ethiopia. The comments of Dr Love with regard to potential difficulties on return as a failed asylum seeker are based on the hypotheses that her name would be on a list of opposition political activists, or that she would be recognised as an activist, and I disregard them.

61. Having considered all the evidence, including that not specifically mentioned in my decision, I find that the appellant has not established, having taken into account the lower standard of proof that applies, that she is entitled to the grant of asylum. I do not accept that the appellant has established that she is entitled to refugee status.

62. Having regard to the findings I have made in respect of her claim for refugee status, I do not consider that she is at risk of persecution on return to Ethiopia and entitled to humanitarian protection."

10. Of the six features of Dr Love's conclusions relied upon by the appellant, Judge Wylie specifically dealt with two:

"56. I take account of Dr Love's report as to the likelihood of an ordinary member of EPPF in Ethiopia knowing the name of the national leader, or appreciating the position of ADF. However, even excluding these factors, I do not accept that the additional evidence can change the conclusion of the previous determination that the appellant's claim of being a member of EPPF and as such having been detained in Ethiopia is not credible."

11. It is the failure to deal with the additional four identified features of Dr Love's evidence (as set out in paragraph six above) that founds the central plank of the appellant's first ground of appeal.

12. In his submissions Mr Chakmakjian asserted that there had been a failure by the First-tier Tribunal to recognise the significance of the evidence given by Dr Love - both in relation to its value in addressing the issues of plausibility specifically relied upon by Judge Kamara to underpin her negative credibility findings, and in the general probative value that should be attached to such evidence given the conclusion that the appellant's account was consistent with known circumstances in her country of origin.

13. Ms Savage, who came to the case very late but did an admirable job of understanding and dealing with the key issues, relied primarily on the position set out in the Secretary of State's Rule 24 response, and in particular paragraph 3 thereof, which reads:

"3. The judge has properly considered the expert and medical reports. It cannot be said that the report was considered in isolation. The judge has given adequate reasons for the findings made in respect of credibility. The judge has also properly considered the evidence of the two witnesses and given reasons as to why little weight should be attached."

14. I prefer Mr Chakmakjian's submissions. Given the terms of Dr Love's evidence it was incumbent upon Judge Wylie to explain why she nevertheless found the appellant's evidence to be untruthful, in particular in light of the evidence which sought to undermine the core of the rationale deployed by Judge Kamara for her negative credibility finding, The FtT's decision fails in this regard.

15. Particular confusion derives from paragraph 56 of Judge Wylie's decision, in which the judge specifically addressed the evidence summarised in paragraphs 6(a) and 6(b) above:

"However, even excluding these factors, I do not accept that the additional evidence can change the conclusion of the previous determination that the appellant's claim of being a member of EPPF and as such having been detained in Ethiopia is not credible." [emphasis added]

16. On the face of it the judge was therein accepting the evidence given by Dr Love in respect of the two of the matters identified in paragraph six above, and thereafter disregarding the reasoning of Judge Kamara in relation to such. The judge does not, however, make clear in this paragraph, or elsewhere, what is made of the other four features of Dr Love's evidence relied upon by the appellant. If the judge accepted Dr Love's evidence in this regard, then it is difficult to understand how reliance could have been placed on Judge Kamara's conclusion. If the judge rejected Dr Love's evidence, the appellant ought to have been told why this was so.
17. Given (i) the clear emphasis placed by Judge Wylie on Judge Kamara's adverse credibility finding, (ii) the weight attached by Judge Kamara to the lack of plausibility of aspects of the appellant's evidence, (iii) the evidence of Dr Love taking direct issue with such rationale and (vi) the lack of engagement by Judge Wylie with Dr Love's evidence, I find that the FtT's decision contains a lack of adequacy of reasoning such as to constitute an error of law therein.
18. This error is further compounded by the FtT's consideration, or lack thereof, of the evidence of Lucy Kralj. As identified earlier Lucy Kralj gave evidence relating to the appellant's mental health issues. At paragraph 4.2.4 of her report the following is said:

"4.2.4 I have considered the possibility that her [the appellant's] mental health problems are being caused by her current social difficulties. However, her present situation, although upsetting, cannot account for her current psychiatric profile ..."
19. And then at paragraph 4.2.9:

"4.2.9 In summary, in my own opinion, there is sufficient evidence from a psychological perspective using my review of her ratings, our conversation, her non-verbal behaviours, and my analysis of her statements to conclude that [the appellant's] psychological profile and behaviours are highly consistent with the psychiatric profile of a person who has suffered extensive traumatic experiences over a prolonged period of time ..."
20. This evidence is plainly capable of being of being probative of the appellant's claim to have provided a truthful account of the events in her homeland, and it was specifically drawn to the judge's attention in the skeleton argument placed before her. However, having read the First-tier Tribunal's decision as a whole I am also unable to determine what the judge made of this evidence.
21. In short, for the reasons given above, in my conclusion the appellant cannot ascertain from the decision under challenge why, in the light of Dr Love's and Ms Kralj's evidence, her account was disbelieved. For this reason I find that the First-tier Tribunal's decision is vitiated by error of law, that such error is capable of affecting the outcome of the appeal and that the decision is therefore to be set aside.

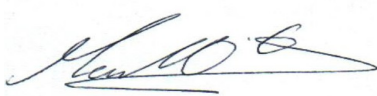
22. I announced my decision at the end of the hearing and both parties were in agreement that given the scale of the further findings of fact that it is necessary to undertake, the appropriate course is for this matter to be remitted to the First-tier Tribunal on a *de novo* basis to be reheard.

Notice of Decision

The First-tier Tribunal's decision contains an error of law and is set aside.

The matter is remitted to the First-tier Tribunal for a fresh consideration of the appellant's appeal.

Signed:

A handwritten signature in black ink, appearing to read 'M. O'Connor', written over a horizontal line.

Upper Tribunal Judge O'Connor
Date: 1 February 2016