Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/07478/2016**

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal on 19 July 2017	**Decision & Reasons promulgated on 4 August 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

FA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard of Fountain Solicitors
For the Respondent: Mrs H Aboni Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge EEM Smith promulgated on 9 January 2017 in which the Judge dismissed the appellant's appeal on both protection and human rights grounds.

Background

2. The appellant is a citizen of Ethiopia born on 1 January 1995.
3. At [21] the Judge describes the appellant as being very unhelpful, a poor historian, a witness who was prepared at the very least to exaggerate his story and who became confused as to which account he relied upon. When challenged

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by the Presenting Officer, the appellant is said to have given contradictory answers to his earlier accounts.

4. The core of the appellant's claim was considered by the Judge in two sections, the first dealing with events prior to the appellant's arrival in the United Kingdom and the second section dealing with sur place activities.

5. In relation to the first element the Judge finds at [22] of the decision under challenge:

> 22. I will deal with events prior to his arrival in the UK:
>
> a) The appellant claims that his father joined Ginbot 7 in 2000 (SEF q18). When giving evidence, he said that his father joined after his land had been taken. It was pointed out to him that what he had said in the SEF interview was that the land had been taken in 2008 (SEF q50) and not 2000. It was pointed out that in his first statement (RB C1) he did not correct this error. When challenged, he maintained the account he gave in evidence was true which is that the land was taken in 2008 and he was therefore in error in his evidence.
>
> b) The appellant claims in his SEF interview that his mother received (SEF q55) paperwork when the land was taken; yet in his statement (RB C1) he states that he did not give that answer. In his evidence the appellant confirmed his latest account which is that she was verbally informed, however, when challenged further as to the difference the appellant reverted to his SEF account that his mother was given a piece of paper.
>
> c) The appellant states he was arrested in Libya and detained for a year. He claims to have been released when his uncle paid $2000. He could not explain how the money was transferred but it was received by the agent. This event was a year after his detention during which time he asks the court to believe that the agent waited for a year before seeking money to affect his release. He was asked how he got in touch with his uncle and in evidence to me he said that he spoke to his mother who did. It was put to him that in his SEF interview (q279) he said "*I know his telephone number so I made a call to him I told him arrested me, going to kill me unless I pay this amount on money*". He was asked to confirm what whether what he spoke to his mother as he had just said or his uncle as he has said in the SEF interview. After a degree of hesitation, the appellant reverted to saying that he spoke to his uncle and, therefore, his earlier account to me was wrong.

6. At [23] the Judge sets out his overall impression of findings in relation to this first aspect of the case in the following terms:

> 23. These are fundamental changes in the account he gave during his SEF interview and it was clear that when challenged he became confused as to what he should say and appeared to select any particular answer even if contradictory to the other answer he had provided. At the very least the appellant in regard to his account of events before he arrived in the UK is unreliable and at worst untruthful.

7. In relation to the second element of the case, risk arising from sur place activities in the United Kingdom, the Judge writes:

> 24. In relation to his Sur Place activities in the UK the following is relevant:

a) the appellant produced in evidence the three originals of the photographs (AB q53). In evidence in chief he said that the middle and right hand photographs were taken at a demonstration in London. The photograph on the left was taken at a demonstration in Manchester. In London, some 40 – 50 people took part and it took part in Victoria near to the English Parliament in May 2016. Initially, the appellant said that the two photographs were taken at two separate events in London but then changed his account having seen the photographs and said it was the same event. The appellant confirmed he was in the middle of both photographs in the black T shirt. In cross-examination, the appellant was specifically asked if he had arranged for the photographs to be taken. He replied *"No, it was being taken by them - the people on the demonstration"*. The appellant was asked how he got these photographs and he replied they had been sent to him after he had asked for them. He was asked how the authorities would know the contents of the photographs with him on them. He replied they would because they are all over the place. When again challenged about his account of how the photographs had been taken with him central in each one the appellant gave another and a very different account. He said that the photographs were taken on his own mobile telephone and he asked someone to take them. He did not know the name of the person he asked. He accepted that he possessed the originals.

b) The appellant was asked what building in London he was standing opposite. He did not know. He was asked if it was the Ethiopian Embassy and again he did not know. In fact, it appears the appellant knew very little about this demonstration, where it took place and the relevance of the place he was standing or indeed why he was there.

c) The appellant produced to the court a leaflet for a meeting (as opposed to a demonstration) in London on 27 November 2016, which was on a different date to the demonstration. He said he attended and it was an anti-government meeting. It was put to him that the cost of the ticket was £25. He said he paid that. He was asked how much he receives each week and he confirmed it was about £37. It was put to him that the cost of the ticket and the cost of travel to London is greater than a week's income and it makes no sense to spend that much, even if he had the money. The appellant was unable to answer. Mr Howard later argued that in fact if he did pay that amount it supported his claim to be committed to anti-government demonstrations.

d) The appellant accepted that in his time in the UK this was the only other meeting he had attended. It was put to him that the photographs he had taken on his own mobile could never fall into the hands of the Ethiopian authorities as they were his own personal possession. He didn't accept that but was unable to elaborate.

8. The Judge sums up his overall impression in relation to the second element of the case and relevant findings at [26] where it is written:

> 26. When challenged about the different accounts he had provided the appellant frequently hesitated before answering. I have assessed [sic] very carefully this appellant's evidence, I have considered his statements and in particular his claims to Sur Place activities and I have factored into my assessment his section 8 failure. Having done so for the reasons which I have given, I am not satisfied even to the lower standard of proof that the appellant has provided a true account of his experiences and reasons for claiming asylum that justifies his claim of fear. I have found that appellant's account is simply not credible and he has concocted his account of the events in Ethiopia and in the UK and his reasons for fearing return. I am satisfied the appellant has not established even to the lower level that his father was a member of Ginbot 7 or that he the appellant was. I am satisfied he has not established

> his land was taken from his family or that he was detained for 3 months in Ethiopia or the year in Libya. Over and above my findings I am satisfied those matters raised in the refusal letter in terms of credibility are justified and I adopt them.

9. The appellant sought permission to appeal asserting the Judge failed to make findings and failed to apply relevant country guidance, made a material misdirection of fact/law, gave inadequate reasons as to why the appellant would not face a persecutory risk on return to Ethiopian, and failed to assess the persecutory risk of the appellant as a failed asylum seeker.
10. Permission was initially refused by a judge of the First-tier Tribunal but granted on a renewed application by the Upper Tribunal of 5 May 2017.

Error of law

11. The Judge clearly considered the evidence made available with the required degree of anxious scrutiny, identify relevant legal issues, sets out a correct self-direction as to the relevant law, and sets out those findings which are said to arise from the evidence made available.
12. The alleged misdirection was a failure by the Judge to take into account an error that occurred between the Ethiopian calendar and Gregorian calendar but such a claim has not been made out and as pleaded fails to establish any arguable error material to the decision to dismiss the appeal arising from this point. Indeed, in the grant of permission Upper Tribunal Judge Perkins opines that there is little justification for the contention that the Judge perversely ignored the difference between the two calendars.
13. The appellant asserts the Judge, whilst noting the appellant produced evidence of participation in sur place activities, failed to make a finding as to whether the appellant was actually involved in such activities and if so why involvement would not put him at risk on return to Ethiopia.
14. The Judge clearly considered the evidence surrounding this second aspect of the case including noting that the appellant had arranged photographs of and for himself on his telephone, standing opposite a building he could not identify and could not establish was the Ethiopian Embassy, produced a leaflet for an event that it appeared uneconomic for the appellant to attend with no evidence of his actual having attended, and that there was no evidence the material on the telephone will be known to or discovered by the Ethiopian authorities.
15. The Judge at [25] sets out the self-direction in relation to assessing sur place activities resulting in the finding at [26] that the appellant has not provided a true account of his experiences and reasons for claiming asylum. The appellant's claim related to risk arising from events in Ethiopia and in the United Kingdom. If the appellant had not proved what he said occurred was true, this is clearly a finding by the Judge that the appellant had not undertaken the sur place activities he claimed that would lead to a real risk on return. In this respect two points are noted, the first that the appellant did not know if the building he was allegedly standing in front of was the Ethiopian Embassy and secondly the claim that he attended a demonstration in London in Victoria near the English Parliament in May 2016. The Ethiopian embassy is not located in Victoria or

near the English Parliament but overlooking Hyde Park in Kensington Road, South Kensington, in London.

16. The overall conclusion that the appellant had not established a risk arising from his sur place activities was clearly within the range of findings reasonably open to the Judge on the evidence, especially as the appellant failed to establish that those he claims to be in fear of would even know he was acting as claimed, irrespective of his disingenuous motive. It was found the appellant had failed to establish that any of the evidence that he was seeking to rely upon would come to the notice of the Ethiopian authorities.

17. The grounds also assert the Judge failed to give adequate reasons as to why the appellant would not be at persecutory risk on return to Ethiopia but such claim has no arguable merit. The Judge gave numerous reasons why the appellant had not established there was any merit in his claim, which was found to lack credibility, or that any weight could be given to the claim the appellant would be perceived to be active or influential in opposing the Ethiopian state by the Ethiopian authorities.

18. The appellant also asserts the Judge failed to assess the persecutory risk the appellant faces on return to Ethiopian as a failed asylum seeker but no evidence was provided by way of a country guidance decision or country material before the First-tier Tribunal or Upper Tribunal to establish that a failed asylum seeker would be at risk for that reason alone on return to Ethiopia. Whilst there is country information showing those perceived to have an adverse profile may be at risk as does not extend to those who have done as little as this appellant has, on the available evidence.

19. No arguable legal error has been made out. The Judge gave adequate reasons for the findings made. The weight to be given to the evidence was a matter for the Judge.

Decision

20. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity

21. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

    I make that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 3 August 2017