



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

Appeal Number: PA/09189/2016

THE IMMIGRATION ACTS

**Heard at Stoke
On 2 November 2017**

**Determination Promulgated
On 6 November 2017**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**FH
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Martin, Counsel

For the respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. I have anonymised the appellant's name because this decision refers to his protection claim.

Summary of asylum claim

2. The appellant is a citizen of Ethiopia. He is a marathon runner, who has participated in international competitions. He claims that the authorities regard him as an Oromo Liberation Front (OLF) support who has declined to assist the government, and that he has been detained and ill-treated for reasons relating to this.

Procedural history

3. The respondent refused the appellant's claim for asylum for reasons contained in a decision dated 15 August 2016.
4. In a decision dated 6 September 2016 First-tier Tribunal Judge Mathews accepted that the appellant is an international runner of Oromo ethnicity but did not accept that he was detained or politically active as claimed, and dismissed the appeal.
5. Designated Tribunal Judge Shaerf granted permission to appeal observing that it is arguable that the First-tier Tribunal made factual errors, which infected the credibility findings.
6. The respondent submitted a rule 24 notice dated 21 September 2017 in which she submitted that the findings of fact were open to the First-tier Tribunal.

Hearing

7. Mr Martin relied upon the grounds of appeal and Mr McVeety relied upon the rule 24 notice, albeit that he conceded there may be problems with the findings at [22].
8. After hearing from both parties, I reserved my decision, which I now provide with reasons.

Error of law discussion

9. I am satisfied that the First-tier Tribunal made three material errors of law.
10. First, the finding at [21] that the trust placed in the appellant is inconsistent with him not being invited to be a member of the OLF, fails to take into account the country background evidence. The apparently undisputed country background evidence before the First-tier Tribunal indicated that at the relevant time the OLF was

classified as a terrorist organisation that carries on its activities ‘underground’, and that both members and supporters face arrest, interrogation, torture and extra-judicial killing. This evidence supports the appellant’s evidence that the organisation is very secretive and cautious, and as such he was not invited to be a formal member, notwithstanding the extent of his activities. The First-tier Tribunal’s contrary finding is unsupported by any evidence and entirely speculative.

11. This error is repeated at [26] when the First-tier Tribunal finds the appellant’s local prominence “*to be at odds with the appellant’s claim not to be a member*”. The appellant’s evidence is that he was a supporter of the OLF but had joined a secret OLF cell group in his local area. This is corroborated by the OLF Chairman in the UK. Mr McVeety argued that the claim not to be a member is inconsistent with the claim that he was a member of a secret cell. However, in my judgment there is no such inconsistency. Indeed, the appellant consistently maintained that he was a supporter and not a formal member but was a member of a secret cell as an OLF supporter.
12. Second, the First-tier Tribunal appears to have misunderstood the appellant’s claim that he distributed leaflets at night. The First-tier Tribunal regarded this to be “*strange*” at [22] without explaining why. It is entirely plausible that leaflets produced by an unlawful organisation, whose supporters are routinely tortured, would be distributed at night and on an anonymous basis, i.e. by leaving them under the doors of mosques and schools. The record of proceedings notes that in response to the question “Who were you giving leaflets to?”, the appellant said: “I was not handing them to anyone directly, I was rather dropping them in secret in public places so that people could pick them up later”. Given the context within which the OLF operated in Ethiopia, as Mr McVeety acknowledged, it is difficult to see what is strange about this account.
13. The First-tier Tribunal also states that “*night people could put up posters, but that was not the nature of the activity initially described by this appellant*”. Mr McVeety accepted that this reasoning is difficult to follow. He accepted that the appellant has consistently maintained throughout his interview, witness statement and in oral evidence that he distributed leaflets, and did not put up posters, and his description of his leafleting activities has not changed.
14. Third, the First-tier Tribunal’s finding at [26] that the means by which the detained student was able to warn the appellant is unclear fails to take into account relevant evidence: the appellant clearly explained that two students were arrested with material he had provided them with (Q 152) and he was provided with this information not by the students but by their teacher and the cell leader, Alemu (Q 153c and para 6 of the appellant’s witness

statement).

15. I acknowledge that the First-tier Tribunal gave many other reasons for drawing adverse inferences as to the appellant's credibility. However, when making the ultimate finding on credibility at [29] the First-tier Tribunal made it clear that the evidence and "*the issues of credibility*" were viewed in the round and when "*taken together... they drive me to conclude that I find the appellant's account lacking in credibility for the reasons set out above*". It is difficult to separate the credibility findings or to properly understand which concerns were of particular influence on the First-tier Tribunal. Mr McVeety conceded that if I found that any of the three errors identified above were made out, then it followed that the credibility assessment was unsafe. I am satisfied that the errors I have identified above played a material role in the overall credibility assessment and in the premises that assessment is infected by errors of law, and must be remade.

Conclusion

16. The First-tier Tribunal erred in law in its approach to the evidence set out above. The errors I have focussed upon are sufficiently wide-ranging and fundamental to lead me to the view that the conclusion on credibility is vitiated by errors of law and unsafe. The decision must be remade entirely and de novo.

Disposal

17. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal.

Decision

18. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
19. The appeal shall be remade by the First-tier Tribunal de novo.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
2 November 2017