Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01569/2018

THE IMMIGRATION ACTS

Heard at Liverpool	**Decision & Reasons Promulgated**
On 18th September 2018	**On 10th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

NUHAMIN [K]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Sills of Counsel, Z D Spicer Zeb Solicitors
For the Respondent: Mr Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Ethiopia born on 29th December 1993. The Appellant left Ethiopia on 25th August 2017 travelling direct to the UK arriving at Heathrow and claimed asylum on 21st September 2017. Her application for asylum was based upon a purported well-founded fear of persecution in Ethiopia on the basis of her political opinion in that her claim was to be considered under political opinion because she claimed to be a supporter of Ginbot 7, which is considered a terrorist organisation by the Ethiopian authorities. The Appellant's application was refused by Notice of Refusal dated 20th January 2018.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Tobin sitting at Manchester on 2nd March 2018. In a decision and reasons promulgated on 3rd April 2018 the Appellant's appeal was dismissed on all grounds.

3. Grounds of Appeal were lodged to the Upper Tribunal on 17th April 2018. On 16th May 2018 First-tier Tribunal Judge Hodgkinson granted the Appellant permission to appeal. Judge Hodgkinson noted that the grounds argued that the judge had erred by failing to take into account material matters, by failing to consider country evidence, properly or at all; by providing inadequate reasons; by making contradictory findings; by misinterpreting the available evidence and in reaching an irrational decision (as particularised in the grounds).

4. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by her instructed Counsel Mr Sills. Mr Sills is familiar with this matter. He appeared before the First-tier Tribunal and he is the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer Mr Whitwell.

Submission/Discussion

5. Mr Sills starts by commenting that much of the Appellant's case is accepted by the Secretary of State in the Notice of Refusal. He points out that her nationality is accepted, that she is acknowledged as a low-level supporter of Ginbot 7, that she was arrested and detained by the authorities for attending a demonstration in October 2016 and that all this is set out in a summary of findings of fact at paragraph 36. However, he points out that at paragraphs 44 and 45 it is not accepted by the Secretary of State that the Appellant is at risk on return to Ethiopia.

6. He takes me to the Policy and Information Note on Ethiopia issued by the Home Office (version 2.0e October 2017) and refers me therein to the relevant paragraphs which are to be found in the consideration of issues section and the policy summary at paragraphs 2 and 3. In particular he takes me to the policy summary which he submits sets out the issues that the First-tier Tribunal Judge had to deal with. It is his contention that the finding that the Appellant is a supporter, which is accepted by the Secretary of State means that the Secretary of State cannot avail himself of the findings at paragraph 3.1.6 which states:

> *"However, persons who have a low profile who are not active in opposition groups may face harassment or discrimination but, in general, this will not reach the level to constitute persecution."*

He submits that such a finding, both by the Secretary of State and as endorsed by the First-tier Tribunal Judge, is effectively an error of law bearing in mind that the Respondent had accepted that the Appellant was politically active and was detained in political protests over a year before she came to the UK and that it is accepted that she was a supporter of G7.

He submits that the judge was required to take her accepted history of political activism into account when assessing her support for G7 and that he has failed to do so at paragraph 20 where he has merely indicated that the Appellant has "voiced mere platitudes that she could not explain." He submits that the judge was engaged with the evidence and it is necessary for the judge to do so and to make clear findings.

7. He further goes on to examine paragraphs 21 to 32 in some detail. He contends that at paragraph 21 the judge has given inadequate reasons for finding the Appellant's reasons for becoming a member of G7 to be inconsistent. Further at paragraph 27, having made adverse findings against the Appellant on an assumption that PG7 activities in the UK in Ethiopia would place her family at equal risk, the judge goes on to record the Appellant's admission that there is a difference between being a member of PG7 in the UK and in Ethiopia. He contends that the judge is in effect criticising the Appellant's case based on contradictory findings and this is unfair and amounts to an error of reasoning.

8. He contends that the judge misrepresents the Appellant at paragraph 23 in that the Appellant does not state that the authorities know she is a PG7 supporter because the authorities raided her house and confiscated her phone and laptop. The Appellant has he says gone on to explain the reasoning for that and refers me to paragraph 5 of the Grounds of Appeal. Further, he contends that at paragraph 26 the judge has failed to take into account the key facts of the Appellant's claim which is that it was only after she came to the UK that the Ethiopian authorities found out she was a PG7 supporter. Further, he submits that the judge has made a finding at paragraph 28 that the Ethiopian authorities would not attempt to track down the Appellant with a view to murder on the basis of materials posted on the internet of her attending demonstrations and that this is inconsistent with paragraph 10.2.1 of the Country Information Note. Finally, he takes me to paragraphs 31 and 32 where he contends that the judge has departed from the Respondent's policy document without giving reasons and submits that the judge entirely misses the point about PG7 in the country information in that it is the Ethiopian authorities that have designated PG7 as a terrorist organisation, not the country information. He indicates that in such circumstances there are a substantial number of material errors of law and that it is appropriate to remit the matter back to the First-tier Tribunal for rehearing.

9. Mr Whitwell indicates that it is necessary to read the conclusion as a whole and it is clear what the judge had found out and why and that it is necessary to give due consideration to the ultimate conclusion of the policy document, in particular that at paragraph 3.1.4 it states:

> *"However a person who, although having sympathy with the OLF, ONLF or AGUDM, has had limited involvement with the organisation and has not come to the attention of the authorities is less likely to be at risk. The onus is on the person to demonstrate that they would be at risk."*

He submits that it is necessary to be very wary about conflating the risk set out in the Notice of Refusal and he refers me to paragraphs 32 to 35 of the Notice of Refusal and to question 94 of the asylum interview submitting that it has not been found that there is a link between the Appellant's arrest at demonstrations and her low-level activities. He too looks at the findings of the judge pointing out that the judge's findings at paragraph 21 are very clear and that the judge was not persuaded about the Appellant's political sincerity. He submits that the judge's findings are adequate. Further he submits that the judge's findings on the Appellant's sur place activities at paragraph 28 are reasonable and that the Appellant does not come near the required threshold of the policy document. He submits that overall the judge has done enough and that there is consequently no material error of law in the decision.

The Law

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

12. The issues before me are a "reasons challenge". What is contended is that the judge's adverse findings at paragraph 20 is inconsistent with the Respondent's acceptance of her PG7 support when she was in Ethiopia and that it is contended that the judge erred at paragraph 23 in his indication as to how the Ethiopian authorities learnt of the Appellant's PG7 activities in Ethiopia. Further, there are contentions that in the grounds that the judge has allegedly failed to identify country material relied upon.

13. I consider that this is the key to the issue. This is an Appellant who, according to the Secretary of State is accepted at paragraph 36 the Notice of Refusal of being an Ethiopian national, who supports Ginbot 7 and who has been arrested at a demonstration. In such circumstances it is a requirement that the judge gives full consideration to the factual issues herein and I am satisfied that the judge has failed to specifically apply the guidance given in the policy summary at 2.3 (in particular 2.3.12) where it is accepted that anyone who is a member or perceived to be a member of one of the three opposition groups, including Ginbot 7 may be subject to abuses. In assessing how the Ethiopian authorities would view a member of PG7 i.e. as a terrorist organisation, I accept the submissions made by Mr Sills that the judge's reasoning is confused and that the judge potentially has failed to follow the Respondent's own policy guidance.

14. I accept that Mr Whitwell contends that the judge has done enough but it is incumbent upon the judge to make clear findings and if those findings are to be based on country information to relate them to them. The judge has failed to make such specific connection and cross-reference to the policy document and as such has fallen into error. In such circumstances the decision is unsafe and I find that that there are material errors of law and set aside the decision and remit the matter back to the First-tier Tribunal for rehearing with none of the findings of fact to stand. I emphasise however that this is not to say that on a rehearing of this matter that another judge will not come to exactly the same conclusions of those reached by Immigration Judge Tobin.

Notice of Decision

15. The decision of the First-tier Tribunal contains material errors of law and is set aside. Directions are given hereafter for the rehearing of this matter:

    (1) That on finding that there are material errors of law in the decision of the First-tier Tribunal Judge the decision is set aside and is remitted back to the First-tier Tribunal at Manchester on the first available date 28 days hence with an ELH of three hours.

    (2) That none of the findings of fact are to stand.

    (3) That the appeal is to be heard before any Judge of the First-tier Tribunal other than Immigration Judge Tobin.

    (4) That there be leave to both parties to file and serve a bundle of further subjective and/or objective evidence upon which they seek to rely at least seven days prior to the restored hearing.

    (5) That the Appellant do personally attend the appeal for the purpose of cross-examination.

    (6) That an Amharic interpreter do attend the restored hearing. In the event that the Appellant requires an interpreter of any other language to be present then the Appellant's instructed solicitors must notify the Tribunal within seven days of receipt of these directions.

16. No anonymity direction is made.

Signed Date: 4th October 2018

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date: 4th October 2018

Deputy Upper Tribunal Judge D N Harris