Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06727/2018**

THE IMMIGRATION ACTS

Heard at North Shields (Kings Court)	**Decision & Reasons Promulgated**
On 25 April 2019	**On 08 May 2019**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

H G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative
For the Respondent: Ms Petterson, Senior Presenting Officer

I make an order prohibiting the disclosure of any matter of document that might lead to the identity of the appellant or her child becoming known to the public pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Any breach of this order may lead to contempt proceedings.

DECISION AND REASONS

1. In his decision dated 11 July 2018, First-tier Tribunal Judge Cox dismissed the appellant's appeal against the Secretary of State's decision dated 17 May 2018 on grounds under the Refugee Convention, the Qualification Directive and with reference to the Human Rights Convention. The appellant is a national of Ethiopia, who in 2017 arrived in the United

Kingdom clandestinely and claimed asylum. The judge set out the appellant's case as follows in his decision:

> "7. The Appellant was born in Kunni, Ethiopia. She is from the Amharic ethnicity. In 2010 local Oromo people killed the Appellant's father because of his ethnicity. The Appellant's mother died of natural causes in 2016. The Appellant has no siblings.
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> 8. In the Appellant's home village, the local population is predominately from the Oromo ethnic group and they would harass the Appellant and other ethnic Amhara.
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> 9. In March 2011 the Appellant stated to support Ginbot7. When the Appellant's uncle learned of the Appellant's political views he inspired her to support the movement. He had been a member of Ginbot7 for about two years.
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> 10. The Appellant started attending secret meetings. Five people would attend the meeting, including the Appellant's uncle, who decided the time and location of the meeting. The Appellant went three times. She contributed 30Birr per month and in April 2011 distributed leaflets.
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> 11. In June 2011, the Appellant was going to a meeting, and, as she approached, she could see from a distance her cell members in handcuffs. They were being dragged into a police vehicle. She went into hiding at a friend's house. Later that day the authorities went to the family home and threatened the Appellant's mother. They asked about the Appellant's whereabouts and gave her a warrant. The following day the authorities arrested and detained the Appellant's mother. They tortured her. After a few days, the released her on bail.
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> 12. The Appellant's mother arranged for the Appellant to leave Ethiopia. After ten days in hiding, the Appellant flew to London with an agent, who had arranged **a** false passport for her. She worked in Lebanon for about a year and then went to Greece, via Syria and Turkey. The Appellant claimed asylum in Greece and she was fingerprinted. The authorities issued her with a permit that she had to renew every three months. She stayed in Greece for about 4 years and 4 months and suffered racial discrimination.
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> 13. In January 2017 the Appellant flew to France with an agent using a false passport. She stayed in France for about 8 months and then travelled to Belgium, where she stayed for 2 months.
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> 14. On 16 November 2017, the agent got the Appellant onto the back of a lorry and she arrived in the UK later that day.
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> 15. In December 2017, the Appellant applied to join Ginbot7 and the application was successful. She officially became a member on 14 May 2018.
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> 16. On 16 December 2017 the Appellant attended a Ginbot7 meeting in London. Following the Respondent's decision, she attended a further meeting on 16 June 2018. In addition, the Appellant attended a demonstration on 7 February 2018.

17. The Appellant fears that if she returns to Ethiopia, the Ethiopian authorities will kill her because of her political opinion."

2. The judge gave detailed reasons for his conclusions on the evidence between paras [23] and [38] and, in particular, explained at [37] in relation to pre-arrival events as follows:

> "37. When looking at the evidence in the round, I have given the Appellant credit for aspects of her claim. Nonetheless, I find that she has failed to discharge the burden of proof. The Appellant has not satisfied me that she has given a truthful account of experiences in Ethiopia. In particular the Appellant has not satisfied me that she was involved with Ginbot7 in Ethiopia or that the authorities had an adverse interest in her, when she left Ethiopia. In addition, the Appellant has not satisfied me that she left Ethiopia unlawfully. It is my view, that the Appellant manufactured a claim for asylum in order to stay in the UK."

3. The judge accepted that the appellant had been politically active in the United Kingdom and he formed the view that the background material demonstrate that the Ethiopian authorities are likely to take an adverse interest in anyone they suspect of supporting Ginbot 7 (see [44]). He thereafter considered the evidence of the appellant's UK based activities and concluded at [51] and [52]:

> "51. On the totality of the evidence, I find that the Ethiopian government relies on informers or spies to identify individuals attending a demonstration. As such, the Appellant's attendance at one demonstration is not reasonably likely to have come to the adverse attention of the Ethiopian authorities.
>
> 52. On the other hand, I have no doubt that the Ethiopian authorities keep a close eye on Ginbot7 activities in the UK. They will monitor electronic communication and rely on spies/informers to identify active participants. However, at present the Appellant's involvement in the UK has been extremely low level. Having carefully reviewed all the evidence, I find that the Appellant has not demonstrated that the Ethiopian authorities are reasonably likely to have an adverse interest in her."

4. The grounds of challenge refer to the Country Policy and Information Note regarding the risks faced by Ginbot 7 members and that the appellant, having been outside Ethiopia for seven years would attract adverse attention attributable to her membership and activities. The appellant had shown there was a real risk of persecution when the correct standard of proof was applied. Reference is also made to the Qualification Directive, in particular reg. 6(1)(f) as to the definition of political opinion and reg. 6(2) (whether or not a person actually possesses the relevant characteristic). It is argued that the regulations had not been applied correctly.

5. Permission to appeal was granted on a renewed application to the Upper Tribunal by Deputy Upper Tribunal Judge Chapman. In granting permission, she explained at [3]:

> "3. The First-tier Tribunal Judge accepted at [26] that the Appellant is a member of Ginbot7 and had attended a demonstration and two meetings in the UK. However, he went on to make an adverse finding as to the credibility of the Appellant's account of the raid by the Ethiopian authorities on a Ginbot7 meeting in Ethiopia at [34]. Bearing in mind that the Appellant was no longer represented in her application for permission to appeal, it is arguable that the reasons provided by the Judge for finding the Appellant would not be at risk on return, either on account of her membership of Ginbot7 in Ethiopia or in the UK are insufficient."

6. The appellant was unrepresented at the hearing before me when an Amharic court interpreter was provided. She recognised the grounds of challenge which she explained had been prepared by Justice First who did not however represent appellants at hearings. She had most recently seen them about a week ago. The appellant confirmed that she understood the issues to be decided at the hearing and confirmed that the FtT decision had been translated for her. She had not seen the rule 24 response which formed the basis of Ms Petterson's submissions and I am grateful to the interpreter for translating the document. The appellant indicated that she was ready to proceed without representation and, having regard to the issues in this case, I decided that it was just to do so.

7. After I had explained to the appellant the essence of the challenge (the judge had applied the wrong standard of proof), she responded in terms that she had been asked too many questions at the hearing and recalled there had been some twenty. Four or five questions had been asked by the judge and the rest by the Home Office Presenting Officer. The appellant asserted that she had told the truth. The way in which she had left the country did not permit her to bring in documentation by way of corroboration. She referred also to a tribal war continuing in the country and the risks faced by changing an address or going to another area. She finally referred to her child who had been born twenty days earlier. The father is Timsae Mamo Feyisa. The appellant explained that he had a residence permit and that he was "just a partner". He is of Ethiopian origin.

8. Ms Petterson relied on the Rule 24 response and, with reference to the questioning of the appellant, observed she had been represented by counsel at the hearing.

9. I reach the following conclusions. At [5] the judge directed himself as to the burden and standard of proof and correctly stated in respect of the latter that it was to the lower standard. There is nothing in my reading of his careful decision to indicate that a higher standard was applied. There is no indication that he overlooked any of the evidence which, as confirmed in paragraph [37] he considered in the round. As noted above, the reference by the appellant to the number of questions she was asked does not appear excessive and, as observed by Ms Petterson, the appellant was represented by Miss Hashmi of counsel, who made no submissions as to procedural fairness at the hearing, nor subsequently.

10. I am unable to accept the observation by Deputy Upper Tribunal Judge Chapman regarding the adequacy of reasons. The judge's findings as to facts and credibility are set out between paragraphs [23] and [52]. In my judgment he gave sustainable reasons for rejecting the appellant's account of claimed difficulties before leaving Ethiopia and gave sustainable reasons why he did not consider the appellant's sur place activities would place her at risk. This included reference to the Country Information Policy Note, the 2014 Amnesty Report.

11. In relation to the appellant's claimed profile in Ethiopia, the judge noted that there had been a clear inconsistency between the appellant's account given during the hearing and her responses recorded in the SIR of which he gave examples. He attributed the change by the appellant in her account to a realisation that if she had left Ethiopia lawfully this would contradict her claim that the authorities had issued a warrant for her arrest. He considered this a weighty factor which damaged the appellant's credibility generally. In relation to the raid on the cell meeting the judge gave sustainable reasons ([33] and [34]) why this aspect of the account was not plausible. These factors together with the absence of any political activities in Greece and her delay in not joining the party until December 2017 led to the conclusion set out above in [37].

12. The only aspect that is questionable is the indication that he had regard to *BA (Demonstrators in Britain – risk on return) Iran CG* [2011] UKUT 36. He does not explain why. Nevertheless, I do not consider that this apparent error renders his decision unsafe or that it requires to be set aside.

13. It is correct that the Country Policy and Information Note (CPIN) Ethiopia: Opposition to the government, October 2017 provides at 2.3.12 (as noted by the judge at [27] of his decision):

> "Anyone who is a member or perceived to be a member of one of the three opposition groups designated as terrorist organisations (the OLF, ONLF or Ginbot 7/AGUDM) – or other ethnic-based violent groups – may be subject to surveillance; harassment; arrest and imprisonment, where they are at risk of incommunicado detention torture and other abuses, or even extra-judicial killing. This may also extend to supporters of these organisations or those who the government suspects of being supporters. The government has used perceived or actual support of the OLF, or their objectives, as a means of suppressing political opposition (see armed opposition groups)."

14. 2.3.18 of the same Note states:

> "Decision makers must determine if someone is likely to come to the authorities' attention because of activities or association that would be likely to give rise to suspicion that they are involved with or support the OLF, ONLF or AGUDM, or other ethnic-based designated group. The onus is on the person to demonstrate this based on their profile and past experiences, including any arrests and political activities, and that they would be subject to treatment amounting to persecution or serious harm."

15. It is clear to me that the fact someone is a supporter of Ginbot 7 is not in itself sufficient to establish that instead it is necessary to decide whether

the activities or associations would give rise to risk. The Home Office Guidance also relies on Upper Tribunal country guidance in *MB (OLF and MTA – risk) Ethiopia CG* [2007] UKAIT 00030 stating in another sub-paragraph that since then "the country situation has not significantly changed". It is not accepted in the country guidance that low-level supporters of opposition groups of any kind would be at risk.

16. I do not know whether the judge in fact intended to refer to the above country guidance rather than *BA* which has no relevance. If he had had regard to the correct country guidance it is inevitable that he would have come to the same conclusion on the evidence and reached the same findings made in respect of any risk faced by the appellant in relation to her UK-based activities.

17. By way of conclusion therefore I am satisfied that, apart from the error I have identified, the judge gave adequate reasons for disbelieving the appellant in relation to her Ethiopia-based activities and that he came to a sustainable conclusion on risk with reference to events in the United Kingdom. Any error in referring to *BA* was not material and there was no other factor in my judgment that requires the decision to be set aside.

Notice of Decision

18. This appeal is dismissed.

Signed Date 2 May 2019

UTJ Dawson

Upper Tribunal Judge Dawson