



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06738/2017

THE IMMIGRATION ACTS

Heard at Field House
On 18 February 2019

Decision & Reasons Promulgated
On 13 March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

SN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Kotak, Counsel, instructed by South West London Law Centre
For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

1. By my decision promulgated on 29 August 2018 I set aside the decision of the First-tier Tribunal. I now remake that decision.

Background

2. The appellant, who is a citizen of Ethiopia born on 14 December 1990 of Oromo ethnicity, applied for asylum on the basis of her involvement with and support of the Oromo Liberation Front (OLF) in Ethiopia. Amongst other things, she claimed that she was arrested and tortured and that she escaped imprisonment when a group of male prisoners broke out of their prison cells.

3. The appellant's account of being persecuted in Ethiopia was not accepted by the First-tier Tribunal and that aspect of the decision was upheld in my decision promulgated on 29 August 2018.
4. The appellant also claims that she has been active in, and would face risk on return to Ethiopia because of her activities on behalf of, the Oromo Community in the UK. In my decision promulgated on 29 August 2018 I directed that the only issue to be determined at the resumed hearing is the appellant's claim to be at risk because of her sur place activities since entering the UK in 2008.
5. In addition to her own witness statements and oral evidence, the appellant relied on witness statements and letters from several individuals involved in the Oromo community in the UK. This included Thomas Banta, chair of the Oromo Youth Association UK (OYA - UK), who gave oral evidence at the hearing.
6. The appellant also relied on photographs and YouTube video screenshots showing her participating in what appear to be protests or demonstrations against the Ethiopian Government.
7. The appellant submitted a considerable amount of evidence concerning the situation faced by those of Oromo ethnicity (as well as others) in Ethiopia. This included a Danish Immigration Service report dated 9 October 2018, a Human Rights Watch Report dated 4 July 2018, a UK Home Office Country Information and Guidance Note concerning Oromos and the Oromo protests dated 27 November 2017 and the UK Home Office Country Policy and Information Note on Ethiopia Opposition to Government dated October 2017. In addition, the appellant relied on a report by Professor Charles Schaefer, Professor of International Studies and African History at Valparaiso University in Indiana, USA, who has a special interest and expertise in Ethiopia and Eritrea, dated 14 February 2019.
8. In this decision I have only referred to the evidence I consider most relevant. However I have read and taken into consideration all of the evidence that was adduced.

Evidence of the Appellant

9. The evidence of the appellant, as set out in her four witness statements and given orally, is that she is, and has been for most of her time in the UK, politically active in support of Oromos in Ethiopia. She claims to have participated in a number of demonstrations and protests and to be a member of several Oromo organisations in the UK that support and are linked to the OLF, including OLF - UK. She also claims to be a member of the management committee of the OYA - UK which she characterised as being very sympathetic to the OLF.
10. The appellant claims to be an active user of Facebook under the pseudonym [] and to have over 7,000 followers, with whom she shares posts concerning the circumstances of the Oromo people in Ethiopia.

11. In cross-examination the appellant stated that she could not recall the last time she attended an OLF UK meeting but that it was in 2018. She said the topic of discussion was how to stop the atrocities faced by the Oromo people in Ethiopia. She asserted that the Oromo people in Ethiopia are stifled and the community in the UK (including her) are able to be a voice for them and expose the atrocities they face to the world. She described OYA -UK as an organisation that works to keep the heritage and culture of the Oromo people alive in the Diaspora and her role as to organise events and programmes.
12. I raised at the hearing that although the appellant asserted in her statement to be very active on Facebook no corroborating evidence (such as a copy of her Facebook page and posts) had been adduced. It was agreed by the parties that the appellant would access her Facebook account and show this to the Tribunal. This step was duly undertaken but proved to be of limited assistance (other than to confirm that the appellant is able to access a Facebook page under the name of []) due to the absence of an internet connection.
13. In response to being asked if she planned to attend demonstrations in the future, the appellant stated that she would go to any if needed but that at present they are observing and closely following the upcoming election. She said that the last demonstration she attended was in 2017.

Evidence of Mr Banta

14. The evidence of Mr Banta, both orally and in his two written statements, was that the appellant is highly active in the Oromo community in the UK. He described her as one of the initiators of OYA - UK and said that she has an important role mobilising youth and organising events. He said that the appellant has courageously spoken out about the atrocities perpetrated by the Ethiopian authorities and is devoted to the Oromo people and speaking out about their suffering.
15. Mr Banta claimed that the activities of OYA – UK are monitored by the Ethiopian authorities, who send people to attend their open meetings. He was firm in his view that the appellant is genuinely motivated by her commitment to the Oromo people and to mobilising the youth within the community in the UK.

Photographic Evidence

16. Photographic evidence submitted by the appellant includes images (taken from YouTube) of her at a demonstration holding a sign saying that the Ethiopian authorities kill Oromos and that they should stop the atrocities and killings. One of the banners reads: "Say no to Ethiopian government dictatorship. Say no to TPLF rule. Enough is enough", and another states: "Stop killing Oromo students". The appellant contends that these images are accessible on-line.
17. A witness statement from the appellant's solicitor dated 23 November 2018 was submitted in which the solicitor stated that video links mentioned in the appellant's statement were available when she viewed them on 23 November 2018. In the light of the assertion by Ms Pal that she had been unable to locate the YouTube videos, I

asked Ms Kotak if she agreed to the YouTube videos being viewed by the Tribunal. She objected to this, asserting that it is sufficient that a solicitor attested to the continued accessibility of the videos.

Country Information and Expert Evidence

18. The country information evidence submitted by the appellant gives an inconsistent and difficult to interpret analysis of the current situation in Ethiopia. Several of the reports from 2018 describe a situation which is improving for the Oromo Community.
19. The appellant relies on the report of Professor Schaefer dated 14 February 2019. The report notes that Dr Abiy Ahmed who was elected Prime Minister of Ethiopia by the Council of the Ethiopian People's Revolutionary Democratic Front (EPRDF) in March 2018, is Oromo and that in his inauguration address spoke of peace and reconciliation.
20. However, despite acknowledging various improvements for the Oromo, Professor Schaefer is of the view that Oromos continue to face a hostile environment in Ethiopia. He also stated that the Ethiopian authorities actively monitor political activities of Ethiopians in the diaspora. Professor Schaefer expressed the opinion that it is plausible that the appellant's activities in the UK have been monitored. Moreover, he also expressed the view that it is lower level OLF sympathisers such as the appellant who are most at risk.
21. At paragraph 85 Professor Schaefer stated:

"The appellant's sur place activities in the UK in support of the OLF and other Oromo grassroots organisations greatly increase the likelihood of persecution if she were to return to Ethiopia. As explained in paragraphs 79 and 81, Ethiopia's surveillance capabilities have improved light years. Moreover, Prime Minister Abiy Ahmed was the founder and first director of the country's information network and security agency, which was tasked with spying on Ethiopians in Ethiopia and abroad. He, perhaps more than any world leader, knows the operational capabilities and political value of surveillance on his own citizens. The appellant's OLF activities in the UK have certainly been noted. As mentioned in paragraph 80, Abiy's reforms and clemency for opposition leaders really extends only to the leaders. It is a matter of perception for the international community. The optics say that Abiy's Ethiopia is embarking on reforms whereas the reality is that opposition members at the lower ranks remain suspect. The current firefights between the EPRDF/ADP and OLF sympathisers out in the provinces demonstrated a huge gap between the government and the OLF leadership on the one hand and the rank and file of Oromo nationalists on the other. The last thing Abiy Ahmed's government want to see is lower rank OLF sympathisers who have proven their organisation skills to come back to Ethiopia. It is precisely these grassroots activists the EPRDF most fears. In my opinion, as a country expert for Ethiopia, the appellant's sur place activities in the UK do increase the likelihood of persecution if she were to return to Ethiopia."

Submissions

22. Ms Pal, on behalf of the respondent, argued that the appellant had not demonstrated that the images (taken from YouTube) showing her holding placards critical of the Ethiopian regime would come to the attention of the authorities. She argued that they do not appear to be available for viewing at the present time and noted that the appellant did not access them at the hearing despite being given an opportunity to do so. She acknowledged that a solicitor had written a statement on 23 November 2018 stating that she had viewed the videos on that date but argued that little weight should be given to this as screenshots of the images were not appended to the statement.
23. Ms Pal also argued that the appellant had failed to put any evidence from her claimed Facebook profile into evidence and that in any event the profile which she claimed was hers is not in her name and therefore would not lead to her being identified. She maintained that even if everything the appellant said regarding her social media presence is true there is no reason to believe that the authorities would link this to her or identify her based on the social media presence.
24. Ms Pal also argued that the appellant, even on her own account, is not presently active in demonstrations, having last attended one in 2017, which undermines her claim to be at risk. She argued that the appellant's political profile, taken at its highest, would not be sufficient to trigger the interest of the authorities in Ethiopia.
25. Ms Kotak argued that there is a wealth of evidence demonstrating that the appellant is highly active within organisations that are closely linked to the OLF and that she actively promotes and organises activities where the Ethiopian authorities are criticised in very strong terms. She argued that the evidence of the appellant's solicitor is clear that the YouTube images are still online and she highlighted the extent to which the screenshots show the appellant demonstrating against the authorities.
26. With regard to the objective evidence concerning the circumstances of the Oromo in Ethiopia, Ms Kotak accepted that there had been some degree of change in 2018 with the appointment of Dr Ahmed, who is himself Oromo, but argued that the expert evidence of Professor Schaefer shows that the authorities continue to be concerned by the activities of OLF supporters outside of Ethiopia. She noted that Professor Schaefer believes that it is probable that a file exists for the appellant already and that the authorities have an interest in clamping down on activists abroad. She highlighted that the appellant has been active for over ten years and maintained that, applying the lower standard of proof, it should be found that the appellant would be already known to the authorities.
27. Ms Kotak also argued that the evidence shows that the appellant has strong, genuinely held political beliefs that if revealed and acted upon in Ethiopia would lead to her suffering persecution.
28. Ms Kotak submitted that the overall conclusion from reviewing the recent objective country information, including in particular the report of Dr Schaefer, should be that

there is no reason to depart from the country guidance case *MB (Ethiopia)* [2007] UKAIT 00030, where it was concluded that:

“OLF members and sympathisers and those specifically perceived by the authorities to be such members or sympathisers will in general be at real risk if they have been previously arrested or detained on suspicion of OLF involvement. So too will those who have a significant history, known to the authorities, of OLF membership or sympathy.”

29. She maintained that as the appellant has a decade-long history, which is likely to be known to the authorities, of OLF membership and sympathy in the UK, it would be inconsistent with *MB* to refuse her asylum claim.

Findings of Fact

30. I find as a fact that:

- (a) The appellant has been actively involved in the UK with organisations that are sympathetic to the OLF for over ten years and has participated in several demonstrations that were highly critical of the Ethiopian Government. I found Mr Banta a convincing witness and his evidence as to the appellant’s extensive involvement with OLF supporting organisations was clear and consistent. Taking his evidence together with the appellant’s own evidence and the photographic evidence showing her attending demonstrations, I am satisfied that the appellant’s level of involvement with OLF supporting organisations in the UK is as she claims.
- (b) The appellant’s involvement with various OLF sympathising organisations will be known to the authorities in Ethiopia and they have a file on her. Mr Banta, in evidence that was clear and persuasive, explained that the Ethiopian authorities infiltrate and monitor OYA-UK. This is consistent with the objective evidence. For example, the Danish Immigration Services Country of Origin Report of 9 October 2018 referred to the authorities monitoring activities of the diaspora. Given the duration of the appellant’s involvement (as well as her leadership position in OYA-UK) it is reasonably likely the appellant is known to the Ethiopian authorities and that, as suggested by Professor Schaefer, they have a file on her.
- (c) The appellant’s support for the OLF is genuinely held. The appellant has spent a decade involved with OLF supporting groups in the UK and Mr Banta seemed amazed that it was being said that the appellant was not genuine in her beliefs. There was nothing in either Mr Banta’s or in the appellant’s evidence that lead me to believe that the appellant is not genuine in her support for the OLF. Applying the lower standard of proof, I am satisfied the appellant’s support of the OLF, and opposition to the Ethiopian authorities, is genuinely held.
- (d) The authorities have a file on the appellant which contains photographs of her attending demonstrations. In the light of the objective evidence indicating that

demonstrations are monitored, and the evidence of Mr Banta that OYA-UK is actively monitored, I find, applying the lower standard of proof, that the Ethiopian authorities have monitored demonstrations attended by the appellant and photographed her at them. It is reasonably likely that these photographs are now held in a file that would be reviewed if she were to return to Ethiopia.

31. I do not, however, accept the appellant's claim that her Facebook page (under the pseudonym []) would put her at risk. Her claim to have a significant Facebook presence could easily have been corroborated by submitting copies of pages from the site, but this was not done and the attempt by Ms Kotak at the hearing to show me the site proved to be of limited value. Similarly, I do not accept the appellant's claim that YouTube videos of her at demonstrations are accessible online, given the failure to take the opportunity given to her at the hearing to demonstrate this.

Conclusion

32. The applicable country guidance case, *MB (OLF and MTA - risk) Ethiopia CG [2007] UKAIT 00030*, states that:

(1) As at February 2007, the situation in Ethiopia is such that, in general:-

(a) Oromo Liberation Front members and sympathisers;

(b) persons perceived to be OLF members or sympathisers; and

(c) members of the Maccaa Tulema Association;

will, on return, be at real risk if they fall within the scope of paragraph (2) or (3) below.

(2) OLF members and sympathisers and those specifically perceived by the authorities to be such members or sympathisers will in general be at real risk if they have been previously arrested or detained on suspicion of OLF involvement. So too will those who have a significant history, known to the authorities, of OLF membership or sympathy. Whether any such persons are to be excluded from recognition as refugees or from the grant of humanitarian protection by reason of armed activities may need to be addressed in particular cases.

(3) Given the proscription of the MTA and the current state of tension on the part of the Ethiopian authorities, the Tribunal considers that MTA members will also be at real risk on return if they have previously been arrested or detained on suspicion of MTA membership and/or of OLF membership or are known or suspected of membership of the MTA. Despite the banning of the MTA, the Tribunal does not consider that the evidence is such as to show a real risk where the extent of the authorities' knowledge or suspicion about an individual relates to something less than membership of the MTA.

33. Even though *MB* was decided over 11 years ago (and there have been huge changes in Ethiopia during the intervening period) neither Ms Kotak nor Ms Pal argued that I should depart from it. The evidence of Professor Schaefer is that it continues to be the case that a person with a significant history of OLF membership or sympathy who is

known to the authorities could be at risk of persecution if returned. In the light of his evidence, I am not satisfied that there are cogent or clear reasons to depart from MB.

34. I have found that the appellant:

- (a) is a genuine supporter of the OLF;
- (b) has been active in several OLF supporting organisations (and has a leadership position in one of them);
- (c) has attended and been photographed at several demonstrations against the Ethiopian authorities; and
- (d) has attracted the attention of the Ethiopian authorities who have a file on her and have retained photographs of her at demonstrations.

35. Applying *MB* to this factual matrix, I am satisfied that the appellant would be at real risk of persecution if returned to Ethiopia because of her activities in the UK. I reach this conclusion even though I have not accepted that images of her at demonstrations are currently available online or that her Facebook profile would put her at risk. The appeal is therefore allowed.

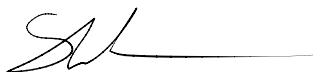
Notice of Decision

The decision of the First-tier Tribunal having been set aside, I now remake the decision by allowing appeal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 11 March 2019