



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

Appeal Number: PA/07386/2017

THE IMMIGRATION ACTS

**Heard at RCJ Belfast
On 6 June 2019**

**Decision & Reasons Promulgated
On 5 July 2019**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**AS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal Judge S T Fox sitting at Belfast on 29 May 2018. The decision was not promulgated until 14 November 2018. In his decision the judge dismissed the appellant's appeal against the decision of the Secretary of State to refuse his asylum and human rights claim made on 28 July 2017. In essence the appellant's case is that he is an Ethiopian national from the Gode area of Ogaden of Somali origin and a supporter of the Ogaden National Liberation Front (ONLF). His case is that he is at risk of arrest on return to Ethiopia on account of his activities in the past which is set out and summarised in the decision at paragraphs 5 to 8. No issue was taken

with that summary of the case. The Secretary of State did not accept the appellant's case noting a number of reasons for doubting his credibility again these are set out in the refusal letter and there is no need to read them into the record at this point.

2. The judge directed himself in line with MB (OLF and MTA risk) Ethiopia CG [2007] UKAIT 00030 and having heard evidence from the appellant found him to not to be credible for a number of reasons set out over a large part of the decision from 26 to 52.
3. The appellant sought permission to appeal on three grounds:
 - (i) the judge had made an error of fact amounting to an error of law in that he had mistaken the appellant's evidence at paragraph 26 finding that the appellant had given contradicting evidence as to working and then further erred at paragraph 27 in noting that the appellant had said that he had been detained two or three times and then released which was not so;
 - (ii) the judge had not properly approached the document confirming the appellant's involvement with the OLF erring by not simply stating that the document could not be relied upon that by going further to reject it and then use this to doubt the appellant's credibility;
 - (iii) the judge's reasoning and findings of fact at paragraphs 43 to 48 are less than clear and in and or inadequate in particular with regard to the judge saying at paragraph 47 certain issues were impossible and making an unjustified expert requirement that the appellant explained why there was no motor vehicle used by the authorities, at paragraph 48 also said it is unclear whether the judge accepts the appellant was indeed shot as claimed.
4. Permission to appeal was granted on 20 February 2019 by Upper Tribunal Judge Chalkley who said

"I believe that the First-tier Tribunal Judge *may* have erred at paragraph 26 of the determination because what the appellant said in answer to question 76 of his asylum interview appears to be very much the same as what he said at paragraph 12 of his statement. The judge has regarded this as having a minor impact on the appellant's credibility but I am concerned that it was an only a credibility finding and one which may therefore have been very much to the judge's approach to considering other aspects of the appellant's claim such as to taint the determination all grounds may be argued."
5. When the matter came before me there was no appearance by the appellant. The appellant's representatives did however attend briefly to explain that they were without instructions and were unable to proceed to support the appellant in his appeal. I am satisfied from this and from the court file that due notice of the time, date and venue of the appeal has been given to the appellant and that he has provided no reason for his failure to attend. In all the circumstances I am satisfied that it would be in the interests of justice for me to proceed to determine the appeal in his

absence and I heard brief submissions from Ms Cunha acting on behalf of the Secretary of State.

6. Turning to the grounds in turn I accept that there may have been a mistake of fact as identified at paragraph 26 of the decision but I do not consider that any such error was material. The judge said that the inconsistency has the capability of making an impact on his credibility when viewed alone but it is evident that he was only at that point indicating a potential for it constituting a damage to credibility. He correctly rightly said that it had to be taken cumulatively and viewed in the round with all the other material factors and I am not satisfied that the judge took this inconsistency as very much weight in the overall assessment of the claim which he then proceeded to do in significantly greater detail and relying on other parts of the appellant's case. Similarly, the apparent error at paragraph 27 is an interpolation by the judge that the appellant appears to have been detained two or three times in Nairobi when this is said not to be the case. But again, this is only relevant to his presence in Kenya which is not the core of his claim which is he is a member of the ONLF and the important point is in the context of the appellant's evidence that the Kenyan authorities to put all such people as themselves as an Ethiopian and or Somali yet this did not happen to him despite him living there was an indication of no adverse interest in him by the Kenyan authorities as such but again this is of limited relevance in the case as a whole.
7. Turning to the second ground of appeal the appellant did produce a document relating to his membership of the ONLF which is referred to first in detail at paragraph 31 of the decision. The judge observed that it was written in English for the most part but that the appellant could not explain this, and it was noted that he cannot read or write. But the appellant did say in oral evidence at paragraph 32 that he confirmed the document was read to him and he was told by those around him that it may be useful to him in the future. The judge identified discrepancies on it noting it had been handwritten and had been altered on at least two separate occasions and that the date of birth had been altered and that the date of issue the document had been altered and when the judge refers to little weight being attached to a document this is reference to a card which he had also produced. The judge had a significant evidence about how this document purporting to show that the appellant was involved with the ONLF had been obtained. This is set out in detail at paragraphs 35 to 40.
8. It is in this context of a long and detailed narrative of criticisms that it is said the judge had erred with respect to **Tanveer Ahmed**. It is correct the judge said that the document has not been explained or verified in any way by the appellant. That is correct but in the context of a document which had so many difficulties with it and in the lack of a plausible explanation as to how it had been obtained set out in the narrative in the preceding paragraphs it cannot be said that the judge's approach to this document was incorrect, unlawful or unjust. It is that narrative as a whole which is said to be cast doubt on the credibility not the document and that

was a finding which was manifestly open to the judge in the light of the evidence and it is of note to the previous findings and observations with regard to the narrative do not form part of the challenge set out in the grounds at paragraph 3.

9. The third ground is a reasons challenge. The core of that challenge is directed at paragraphs 47 and 48. These must be seen in context. It is not it is evident that at 47 the judge was improperly evaluating the plausibility of this claim when saying it was possible that the appellant's activities were frowned on by the authorities in regard to fundraising. But that is simply taking that phrase out of context of what follows in the rest of the paragraph. As regards the challenge to the finding at paragraph 48, while it is correct that the judge did note that the appellant had not explained why the authorities had come on foot as opposed to a motor vehicle when he was meeting in the field, the judge quite properly said that he would not expect him to have a full knowledge of such things but that some sort of explanation may have been proffered or suggested. This is in any event a minor matter and it is not clear that this formed any major part of the judge's decision making.
10. Turning next to the apparent acceptance by the judge that the appellant had been shot. This is properly understood nothing more than an observation that there could be many explanations for a gunshot wound. It could have occurred on any number of occasions and it would of course as is always the case depend on the evidence as to when, where and by whom the gunshot was inflicted. It is unfortunate that the judge refers this to as "innocently" but in the context of this appeal, I am sufficiently satisfied that what he meant was that there was more than one explanation and it was for the appellant in effect to have to show that any gunshot had been inflicted by armed forces at the time and in the manner claimed.
11. Viewing the evidence as a whole I am satisfied that the decision of the First-tier Tribunal does adequately set out the reasons why the judge did not accept the appellant's account. It is sufficiently clear to the appellant why he lost and that is because the judge for a number of cogent reasons did not accept the appellant's account of what had happened to him and why he would be at risk on return to Ethiopia. Accordingly for these reasons I conclude that the decision of the First-tier Tribunal did not involve the making of an error of law capable of affecting the outcome and I uphold it.

Notice of Decision

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it

Signed

Date 24 June 2019

A handwritten signature in black ink, appearing to read "James Rintoul". The signature is written in a cursive style with a large initial 'J' and 'R'.

Upper Tribunal Judge Rintoul