Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/14260/2018

THE IMMIGRATION ACTS

Heard at North Shields	**Determination Promulgated**
On 28 June 2019	On 02 July 2019
Prepared on 28 June 2019	

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

S. T.
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Howard, Counsel, Fountain Solicitors
For the Respondent: Ms Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Ethiopia, entered the UK unlawfully on a date unknown, and made a protection claim on 31 July 2018 which was refused on 12 December 2018.

2. The Appellant's appeal against that decision was heard and dismissed by First Tier Tribunal Judge O'Hanlon in a decision promulgated on 25 March 2019. She was then granted permission to appeal by decision of 25 April 2019 of First tier Tribunal Judge Parkes for arguable failure to properly assess the risks faced by the Appellant upon return to Ethiopia as a result of her "sur place" activity in the UK.
3. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence. Thus the matter came before me.

The challenge

4. Mr Howard, who was not their author, accepted that there was no arguable merit in grounds 1, 2, 3, 5, or, 6. Thus his focus was upon ground 4.
5. The Appellant's case was that she had joined PG7 whilst living in the UK, paying a subscription, and participating in some of the activities organised by PG7 in the UK. Although her case was that these activities would already have attracted the attention of the Ethiopian authorities so that she would have acquired by the date of the hearing an adverse political profile, this claim was rejected by the Judge.
6. The Judge also compared her evidence given at interview, with her oral evidence, and the written evidence relied upon as corroboration. His conclusion was that by the date of her interview the Appellant had done no more than join the organisation by paying a membership fee, and that she then had limited knowledge of the organisation. He went on to conclude that she had only joined PG7 in order to bolster her asylum claim; i.e. that this was a cynical act without genuine political motivation [47]. His overall conclusion was that "at best" the Appellant might by the date of the hearing have had a low level involvement with PG7 [52], which was indeed a fair reflection of her own case.
7. These findings and conclusions are not the subject of challenge in the grounds. Nor is any complaint made over the conclusion that the Appellant had given a false account of her experiences in Ethiopia so that she had not come to the adverse attention of the Ethiopian authorities by the date she had left that country, and had not been detained by them [45].
8. Mr Howard accepts that the evidence relied upon by the Appellant did not suggest that the level of activity in PG7 that the Judge had accepted the Appellant had established "at best" by the date of the hearing was

sufficient to have brought her to the adverse attention of the Ethiopian authorities by the date of the hearing of the appeal. Certainly the grounds do not suggest that such evidence existed and was overlooked.

9. Mr Howard also accepts that the grounds make no complaint that the Judge overlooked any material evidence concerning the likelihood of a returnee from the UK being questioned by the Ethiopian authorities as to the nature and extent of their activities when outside Ethiopia, or their political beliefs, either at the point of return or shortly thereafter. Thus the evidence relied upon did not establish that either the process of documenting the Appellant to render her return to Ethiopia feasible, or, the processing of her physical admission to Ethiopia upon her return from the UK by air would bring her to the adverse attention of the Ethiopian authorities.

10. It is clear that after a significant period outside Ethiopia, and upon a forced removal from the UK, the Appellant might, indeed, be perceived by the Ethiopian authorities as one who might have claimed asylum in the UK. However there was no evidence placed before the Judge, and overlooked by him, to suggest that this would mean that she would be questioned about the nature of her failed asylum claim, and thus placed at real risk of harm in the course of that questioning, or as a result of her answers.

11. Although ground 4 asserts a failure on the part of the Judge to consider the risk to the Appellant once returned to Ethiopia in the context of RT (Zimbabwe) [2012] UKSC 38, there is therefore no foundation for either that argument, or, one based upon HJ (Iran) [2010] UKSC 31, to be found in the Judge's unchallenged adverse findings of fact. The Judge's conclusion was that the Appellant had joined PG7 cynically in order to bolster what was initially a false asylum claim; thus there was no reason for him to consider what would happen in the event she expressed political views in support of PG7 following removal to Ethiopia. It was a necessary consequence of his finding that she would not wish to do so; not out of fear of the consequences of doing so, but because she did not genuinely hold such views, HJ. Nor did the evidence suggest that at any point following physical return to Ethiopia she would face a risk of being expected to express positive support for the regime, and of harm if she could not do so to the satisfaction of her inquisitors, RT.

12. In my judgement, when the decision is read as a whole, it is quite clear that the Judge's decision was careful and

well reasoned, that the findings he made were open to him on the evidence, and, that there is no merit in the complaints advanced in the grounds. In the circumstances, and as indicated at the hearing I am satisfied that the Judge did not fall into any material error of law in his approach to the evidence when he dismissed the appeal, notwithstanding the terms in which permission to appeal was granted. In my judgement the grounds fail to disclose any material error of law in the approach taken by the Judge to the evidence that requires his decision to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 25 March 2019 contained no material error of law in the decision to dismiss the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify her, or her children. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed
Deputy Upper Tribunal Judge JM Holmes
Dated 28 June 2019