Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05833/2019 (P)

THE IMMIGRATION ACTS

Decided without a hearing **Decision & Reasons Promulgated On 20 October 2020**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

MKD (ETHIOPIA)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

1. The appellant is an Ethiopian national who was born on 12 June 1998. She appeals, with permission granted by Judge Adio, against a decision which was issued by Judge Chohan on 20 April 2020, dismissing her appeal against the respondent's refusal of her claim for international protection.

2. The appellant was granted asylum in Greece in 2016 but she travelled to the UK in 2019, whereupon she presented a claim for asylum in this country, contending that she was in fear of the Ethiopian authorities on account of her imputed political opinion. She stated that her father was opposed to the authorities; that he had been killed as a result; and that she had been detained, ill-treated and raped in connection with his activities. The

respondent did not believe her account and refused her application. She appealed to the First-tier Tribunal, and her appeal came before the judge, sitting at the Nottingham Justice Centre, on 9 March 2020.

3. In his reserved decision, the judge found that the appellant had not given a truthful account of the reasons that she had left Ethiopia. He gave two reasons for that conclusion. The first, at [10], related to the appellant's disclosure of the claim that she had been raped by the Ethiopian authorities. The judge was concerned that she had not raised this in her screening interview. He noted that the point had not been raised by the Presenting Officer or in the refusal letter but he considered that 'her legal representatives must be taken to have read the screening interview'. The judge went on to agree with the Presenting Officer that the appellant had only mentioned rape once in her asylum interview, whereas she had mentioned it on at least two occasions in her witness statement. Then, at [11], the judge went on to find the appellant's account implausible, as he was unable to understand why the authorities would have killed her father, who was of much more interest to them, whereas they had opted to question the appellant about her father. For these reasons, the judge did not accept that the appellant had sustained injuries detailed in a medical report in the manner claimed. He rejected the account, and he dismissed the appeal.

4. The grounds of appeal which persuaded Judge Adio to grant permission may be stated quite shortly. The first is that the judge adopted a procedurally improper approach when he attached weight to a point which had not been taken by the respondent, as regards the failure to mention rape in the screening interview. The second is that the judge erred in failing to evaluate the appellant's account against the background evidence when he made the findings he did at [11], as regards the likely actions of the Ethiopian authorities.

5. The papers were placed before Upper Tribunal Judge Pitt on 13 July 2020. On 15 July 2020, she issued directions to the parties, expressing a provisional view that the appeal might fairly and justly be determined on the papers. She sought submissions on that course of action and on the merits of the appeal. The appellant's representatives filed and short submissions by email on 28 July 2020. The respondent has not responded.

6. I consider, firstly, whether it is appropriate to determine the appeal to the Upper Tribunal without a hearing. Rule 34(1) confers a power to do so. By r34(2), I am required to consider the views of the parties. The appellant's solicitors have submitted that a hearing is necessary and that it could be conducted remotely. The respondent has expressed no view. I

have considered the appellant's submissions in this regard. I have borne in mind the over riding objective and I have also considered what was said by the Supreme Court in Osborn v The Parole Board [2014] 1 AC 1115. I consider that I am able to determine the appeal fairly and justly without an oral hearing. The issues are straightforward and the proper outcome of the appeal is quite clear from the papers.

7. I consider both grounds of appeal to be borne out. As to the first, I have no doubt that it was procedurally improper for the judge to hold against the appellant the fact that she did not mention rape in her screening interview when this point was not raised at all by the respondent. It did not suffice for the judge to hold, as he did at [10], that the appellant's representatives must have read the screening interview. There might be any number of reasons why the claim of rape was not raised in that interview and the point should have been put to the appellant if it was to form one of the two bases upon which her entire claim (which had seemingly been accepted in Greece) was to be rejected.

8. It is well established that a screening interview is not the forum for full exploration of an asylum claim, and that the subject of any such interview might not provide full details of their claim at that stage for a variety of reasons: YL (China) UKIAT 145. Equally, it is well established that there might be a variety of reasons for the late disclosure of an account of serious sexual ill-treatment: R (Ngirincuti) v SSHD [2008] EWHC 1592 (Admin). It did not necessarily follow, in other words, that there was no plausible explanation for the late disclosure and this was not a point of obvious contradiction upon which the judge was entitled to seize without the appellant being given an opportunity to address it (contrast WN (DRC) [2004] UKIAT 00213, at [28], for example).

9. Ground two is equally clearly established. The proper approach to considering the plausibility of an asylum claim has been clear for a number of years. The submission which was often encountered at the turn of the century – that British judges were unable to determine what might or might not be plausible in an asylum seeker's country of origin – has been categorically rejected. Instead, the Court of Appeal held that a judge is not required to accept at face value an account proffered by an asylum seeker, no matter how contrary to common sense it might be. In conducting such an evaluation, however, the judge is required to consider the plausibility of the claim through the spectacles provided by the country information before him: Y v SSHD [2006] EWCA Civ 1223, at [25]-[26], per Keene LJ. In concluding that the appellant's account was implausible, the judge in this appeal failed to have any demonstrable regard to the country information before him. He was not entitled, in those

circumstances, to conclude that the behaviour of the Ethiopian authorities was implausible. Without considering the background material, he was simply unable to assess whether what was claimed was or was not an account which sat uneasily against the backdrop presented by the country information.

10. In the circumstances, I consider both grounds of appeal to be clearly established and I consider the decision of the FtT to be vitiated by legal error. The decision on the appeal will be set aside and the appeal will be remitted to the FtT was redetermination afresh. That is the proper course in light of the procedural failing on the part of the judge and the scope of the issues which will need to be reconsidered.

11. The appellant would be well advised to prepare an additional witness statement dealing with the absence of reference to rape in the screening interview. The Tribunal will also wish to give consideration to the wide-ranging changes in Ethiopia since the election of Abiy Ahmed in 2018, two years after the appellant left. The appellant might properly expect the respondent to submit that she is no longer at risk, even if all that she has said is reasonably likely to be true.

Notice of Decision

The decision of the FtT involved the making of an error on a point of law and that decision is set aside. The appeal is remitted to the FtT to be considered afresh.

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. I make this direction because this is a protection-based appeal and because of the allegations of rape made by the appellant.

M.J.Blundell
Judge of the Upper Tribunal (IAC)

20 October 2020