



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03571/2019 (V)**

THE IMMIGRATION ACTS

Heard at : Field House

**Decision & Reasons
Promulgated**

On : 23 September 2021

On the 20th October 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**ADA
(Anonymity Order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Yeo, instructed by Fisher Jones Greenwood Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection by the parties. The form of remote hearing was Microsoft Teams. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

2. The appellant is a national of Ethiopia born on 20 July 2001. She arrived in the United Kingdom on 20 February 2017 with a visit visa, as an accompanied child, together with her uncle, a British citizen, for a holiday. When her uncle fell ill and decided to stay on in the UK for treatment for cancer, the appellant

ended up making an asylum claim after discovering that she was at risk on return to Ethiopia.

3. In her claim, made on 19 July 2017, the appellant stated that she did not use her return ticket to Ethiopia as she did not want to leave her uncle, but then when she later became conscious that her visa was about to expire she tried to contact her father to pay for a new return ticket. However she could not get through to him and she eventually got hold of her aunt in Ethiopia who told her that he had been taken to prison because he was a supporter of Ginbot 7. Her aunt told her that she was also wanted because of her own involvement with Ginbot 7 in Ethiopia, so she therefore made an asylum claim.

4. The appellant's claim was refused on 1 April 2019. The respondent did not accept her account of being a supporter of Ginbot 7 and did not accept that she was wanted by the Ethiopian authorities. The respondent considered in any event that the situation had changed in Ethiopia and that political prisoners had been released from prison and the leaders of Ginbot 7 had been welcomed back. As such it was considered that she would not be at any risk on return to Ethiopia. Further, the respondent considered that the appellant's removal to Ethiopia would not breach her human rights.

5. The appellant appealed against that decision and her appeal was heard by First-tier Tribunal Judge Scott on 7 February 2020. By that time, in light of the changed political situation in Ethiopia, the appellant was no longer pursuing her asylum claim based on the risk arising from her involvement with Ginbot 7, but claimed that she would be at risk as a young person with no family or other support on return to Ethiopia. The judge, however, rejected the appellant's claim to have no means of support in Ethiopia and found that she would not be at risk on return. With regard to Article 8, the judge noted that the appellant had been living with a foster family in the UK for the past two and a half years and that the evidence was that she was exceptionally close to her foster mother. However, the judge did not accept that that was sufficient to amount to family life and she did not accept that any interference with the appellant's private life would be disproportionate. She accordingly dismissed the appeal on all grounds.

6. The appellant sought permission to appeal to the Upper Tribunal on the following grounds: that the judge had erred in finding that there was no family life between herself and her foster mother and her approach to what constituted family life was inconsistent with relevant caselaw; and that the judge had erred in finding that her removal would not be in breach of Article 8 on the basis that she did.

7. Permission was refused in the First-tier Tribunal, but was subsequently granted on a renewed application to the Upper Tribunal, on 25 January 2021. The respondent, in her Rule 24 response, did not oppose the appellant's application for permission to appeal and invited the Tribunal to determine the appeal with a fresh oral (continuance) hearing *"to consider whether the*

appellant has an Article 8 claim on the basis of her relationship with her foster family and in light of Uddin [2020] EWCA Civ 338."

8. In light of the respondent's concession there was no need for a hearing to determine the error of law issue and the matter was therefore decided on the papers under Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008, as follows:

"9. In light of the respondent's concession, and having considered the grounds of appeal myself, I agree that the judge's assessment of whether family life existed between the appellant and her foster family failed to consider and follow the approach set out in Uddin and the various other authorities referred to in the grounds and therefore contained material errors of law in relation to both Article 8(1) and 8(2). Accordingly, I set aside the judge's decision in relation to Article 8. The grounds of appeal did not challenge the judge's findings on protection and Article 3 and the decision therefore stands in those respects.

10. The matter will therefore be listed for a resumed hearing to consider the appellant's Article 8 claim."

9. The matter then came before me for the decision on Article 8 to be re-made.

10. For the hearing the appellant produced a bundle of additional evidence which included detailed statements from herself about her circumstances in the UK and the close relationship she enjoyed with her foster mother; detailed letters from her personal advisor from the Norfolk County Council Children's Services, Claire Hastings, about her relationship with her foster mother and her current situation and future plans; a letter from a senior social worker with Norfolk Fostering Service; statements and letters of support from her foster mother Mandy Wing and other family members; and correspondence with the British Red Cross about efforts to trace her family members in Ethiopia.

11. The appellant attended the hearing, remotely, together with her foster mother Mandy Wing and her personal advisor Claire Hastings and all three gave oral evidence before me, adopting their respective statements as their evidence. The appellant confirmed to Mr Walker that she had had no contact with her aunt in Ethiopia, that Ms Hastings had been attempting to make contact with her family in Ethiopia through the Red Cross but had had no success and that she was happy for Norfolk Children's Services to provide her with services until the age of 25. Ms Hastings confirmed to Mr Walker that the appellant would be provided ongoing services until the age of 25 including throughout her time at university and that there had been no results from the Red Cross in relation to attempts to trace the appellant's family in Ethiopia.

12. Mr Yeo made a preliminary observation that, whilst Judge Scott's decision on the appellant's protection and Article 3 claims still stood, her conclusions on the family support available to the appellant in Ethiopia had been made to a

higher standard of proof than required and were therefore still open for further consideration.

13. Mr Walker accepted, in light of the case of Uddin v The Secretary of State for the Home Department [2020] EWCA Civ 338, that family life could potentially be established between a child and a foster carer and that family life could continue past the age of majority. He accepted that credible evidence had been given by the appellant, Ms Wing and Ms Hastings about the appellant's life in the UK and her close relationship with her foster family, as well as about the unsuccessful attempts to contact family members in Ethiopia. He accepted that that evidence demonstrated that family life had been established for the purposes of Article 8 and he accepted that the difficulties the appellant would face if she had to return to Ethiopia meant that her removal would be disproportionate. Mr Walker accepted that there was no need for me to hear further from Mr Yeo and that the appeal could be allowed on Article 8 grounds.

14. In light of Mr Walker's concessions there is little need for me to provide any detailed reasons for concluding that the appeal should be allowed. Mr Walker did not rely on the findings made by Judge Scott as to the appellant's remaining family ties in Ethiopia and indeed accepted the evidence now produced to support the appellant's claim as to a lack of family support. Whilst Judge Scott was entitled to conclude as she did on the evidence before her, I agree with Mr Walker that the evidence from Ms Hastings and from the Red Cross shows that genuine efforts have been made to trace family members in Ethiopia over a period of time and that there has been no success. Accordingly I accept the appellant's case that she is not in contact with any family in Ethiopia. That clearly strengthens the ties that she has formed in the UK with her foster family and I bear in mind also that her unchallenged evidence has always been that her mother died when she was three years of age and that her foster mother is the only mother she has known. As Mr Walker conceded, the evidence of the strength of the relationship between the appellant and Ms Wing is strong and persuasive and is sufficient to amount to family life for the purposes of Article 8. Further, in view of the lack of a support system in Ethiopia and considering the age at which the appellant left Ethiopia and given the strength of her ties to the UK in terms of family and education, I accept Mr Walker's concession that it would be disproportionate for her to be removed from the UK.

15. Accordingly, for all these reasons I conclude that the appellant's removal to Ethiopia would amount to a breach of Article 8 and I allow her appeal on that basis.

DECISION

16. The original Tribunal was found to have made an error of law and the decision was set aside. I re-make the decision by allowing the appellant's appeal on Article 8 human rights grounds.

Anonymity

The anonymity order made by the First-tier Tribunal is continued, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed S Kebede
Upper Tribunal Judge Kebede
September 2021

Dated: 23