



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/09135/2019**

Appeal Number:

THE IMMIGRATION ACTS

**Remote Hearing by Microsoft
Teams
On the 28th January 2022**

**Decision & Reasons
Promulgated
On the 23rd March 2022**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**FR
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Islam, Fountain Solicitors

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

ANONYMITY

Although an anonymity direction was not made by the First-tier Tribunal, this a protection claim, and it is appropriate that a direction is made by the Upper Tribunal. Unless and until a Tribunal or Court directs otherwise, FR is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies amongst others to all parties. Failure

to comply with this direction could lead to contempt of court proceedings.

INTRODUCTION

1. The hearing before me on 28th January 2022 took the form of a remote hearing using Microsoft Teams. Neither party objected. The representatives were able to see and hear me and each other throughout the hearing. I sat at Field House, and I was addressed by the representatives in exactly the same way as I would have been if the parties had attended the hearing together. I was satisfied: that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing to avoid delay. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

Background

2. The appellant who was born on 1st January 1999, claims to be a national of Ethiopia of Oromo ethnicity and a supporter of the Oromo Liberation Front (“OLF”). He claimed asylum on 19th December 2018 and a screening interview was completed on 22nd December 2018. The appellant’s representatives provided a witness statement dated 27th February 2019 in support of this claim and the appellant was interviewed by the respondent on 1st March 2019. The appellant’s claim for international protection was refused by the respondent for reasons set out in a decision dated 13th March 2019.
3. In her decision the respondent noted that during the substantive interview completed on 1st March 2019 the appellant was asked a number of questions to establish his nationality and identity. The respondent noted some of the responses provided were either inaccurate or incorrect when compared to background information available. At paragraph [42] of her

decision, the respondent confirmed that she does not accept the appellant is a national of Ethiopia. The respondent was not satisfied the appellant has established a real risk of persecution in Ethiopia, or that his removal there would be in breach of his ECHR rights. The respondent noted the appellant had been asked questions about his ethnicity and the respondent rejected the appellant's claim that he is of Oromo ethnicity. The respondent considered the core of the appellant's claim and concluded that his account is internally inconsistent and implausible. The respondent rejected the appellant's account that he had been arrested and detained in Ethiopia. The respondent concluded that the appellant would not be at risk upon return to Ethiopia.

4. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Borsada ("Judge Borsada") on 28th November 2019 and dismissed for reasons that set out in a decision promulgated on 16th December 2019. The appellant gave evidence before Judge Borsada with the assistance of an interpreter. The appellant's claim is outlined at paragraph [5a] of the decision. Judge Borsada's findings and conclusions are set out at paragraphs [8] to [15] of the decision. Judge Borsada said, at paragraph [9]:

"In considering this appeal, I have had regard to all of the oral and documentary evidence provided and I have also had regard to all the written and oral submissions of both the party's representatives. I note the very detailed reasons given by the respondent in the refusal letter for not accepting the credibility of the appellant's claim is added to by the respondent's representative at the hearing and I note too, the rebuttal evidence provided by the appellant as well as the further documentary evidence supplied with the rebuttal statement. I have read through the Home Office or Asylum Interview, and there is nothing on the face of that interview that indicates that it was conducted anything less than fairly. The appellant was given an opportunity at the end of the interview to comment on the interview and this would have been his chance to explain that he did not understand the interpreter or that he had a problem with the interpretation. The appellant did not take up this reasonable opportunity and in those circumstances I have given limited weight to his claim to have not felt able to say anything at the time of the interview about the alleged problems he had with the interpreter. In my view the lack of knowledge of matters relating to Ethiopia and Oromo ethnicity were in fact indicative of someone who was not of that ethnicity or nationality and who was therefore attempting to fabricate his claim."

5. Judge Borsada rejected the appellant's claim that he is a national of Ethiopia for reasons set out at paragraph [10] of his decision. He rejected the appellant's claim that he is of Oromo ethnicity for reasons set out at paragraph [11]. He rejected the core of the appellant's account regarding his attendance at demonstrations and his claim that he had been arrested and detained for reasons set out at paragraph [12]. At paragraph [13], Judge Borsada refers to the letter relied upon by the appellant from OLF UK and the photographs purportedly showing the appellant's *sur place* activities in the UK. At paragraph [15] Judge Borsada concluded:

"It follows from all that I have said above that I do not accept that the appellant has provided credible evidence of a fear of persecution in Ethiopia, and I have not been satisfied on the evidence that he has provided that he is Ethiopian or of Oromo ethnicity. I therefore dismiss the asylum appeal and also the humanitarian protection appeal and the appeal under articles 2 and 3 ECHR insofar as those appeals relied on the same discredited evidence. I note the country information provided by both the representatives which I shall deal with briefly: I have had particular regard to the current country information (at the hearing I indicated to both parties that this would form part of my considerations) in particular the Ethiopian country policy and information note: opposition to the government August 2019 (CPIN) i.e. the dramatic shift in the government stance towards the political opposition, freedom of speech; the release of thousands of political prisoners, including high profile and prominent party members and critics of the government; a decrease in arrests and confrontation with party members and protesters; a generally increased tolerance for political dissidents and an end to the State of Emergency (including the removal of the designations of OLF as terrorist organisations - see 2.5.15 of CPIN). It is therefore now possible to depart from the previous country guidance and that it is not too soon to consider that at the very least low-level members of the opposition are no longer 'at risk' in Ethiopia. I have not gone into more detail about this given my primary conclusion about the appellant's lack of credibility, but it follows that even if I had found the appellant a truthful witness, his asylum appeal was unlikely to succeed. Finally, with regard to article 8 of the ECHR: I note all the points mentioned by the respondent in the refusal letter about this which I entirely agree with and I further note that the appellant did not, in any event, try and argue at the hearing that he had a claim that merited consideration outside the remit of his asylum appeal. I therefore dismiss the appeal under article 8 of the ECHR."

The appeal before me

6. The appellant's grounds of appeal lack focus and are difficult to follow. Be that as it may, permission to appeal was granted by First-tier Tribunal Judge Keane on 22nd January 2020. He said:

“The grounds largely amounted to no more than a disagreement with the findings of the judge, an attempt to re-argue the appeal and they did not disclose an arguable error or errors of law but for which the outcome of the appeal might have been different. However, it was contended in the grounds, particularly at paragraph 1(ii), fifth bullet point and at paragraph 2(i) and (v) that in assessing the appellant’s credibility the judge had not taken into account the fact (not in dispute between the parties to the appeal) that when material events in the appellant’s case occurred in Ethiopia and upon the appellant entering safe countries, he was a minor. The judge trenchantly rejected the appellant’s claims of fact in their totality. The judge found that the appellant was not an Ethiopian national, was not a member of the Oromo ethnic group, was not an activist in the cause of the Oromo ethnic group and was not detained and ill treated by the Ethiopian authorities. In support of such findings the judge identified very many discrepancies and inconsistencies. The judge arguably should have taken into account the appellant’s age when relevant events were said to have occurred and when he entered safe countries. The judge is deserving of sympathy. The grounds did not suggest that such a consideration was urged upon the judge by counsel who appeared on behalf of the appellant at the hearing and the judge’s note of counsel’s submissions did not record such a submission. However, given the totality of the judge’s findings, which amounted to findings that the appellant had not told the truth about anything even his nationality and ethnicity - it was arguably incumbent upon the judge when undertaking a broad assessment of the appellant’s credibility to place in the balance a matter as important as the appellant’s age even if such a consideration and not been urged upon him. The application for permission is granted.”

7. I have been helpfully assisted by Mr Islam, who, at the outset of the hearing before me, summarised the grounds of appeal. I will address each of the grounds in turn, but before doing so, I record that Mr Islam accepts there was no evidence before the First-tier Tribunal regarding the appellant’s mental capacity, his ability to recall events, and there was no medical evidence before the First-tier Tribunal in respect of the scars that he has on his torso. The appellant gave evidence at the hearing of his appeal with the assistance of an Oromo interpreter. The findings and conclusions of First-tier Tribunal Judge Borsada are set out at paragraphs [8] to [15] of the decision.
8. Ground 1 is headed “*Failure to make a material finding*” but fails to identify what it was that Judge Borsada failed to make a finding upon. Rather, it is then said that the judge “*applied higher standard of proof when carried out credibility findings*”, and simply goes on to refer to the answers given by the appellant during his interview. It is said that the

judge “.. Failed to scrutiny the fact that A was a minor when he left Ethiopia and came to the attention of the authorities and was tortured. Any discrepancy and inconsistency should have been assessed in line with his age, mental capacity, past torture when he was a minor and medical evidence (as maintained by the A he suffers from stress)”.

9. Before me, Mr Islam confirmed that the applicant claims the Judge failed to assess the evidence before the Tribunal regarding the appellant’s nationality and to have regard to the appellant’s age. He submits that at paragraph [10] of the decision, Judge Borsada considered the appellant’s nationality. He submits the appellant was interviewed on 1st March 2019 and during that interview, he was asked a number of questions to establish his nationality. He had given a number of correct answers during that interview. Mr Islam accepts that some of the answers given by the appellant during the interview were incorrect as set out in the respondent’s decision. He submits it may have been that the answers given were wrong, because of the appellant’s age and lack of knowledge of those matters. Mr Islam accepts that that was not the case put before the First-tier Tribunal.
10. There is, in my judgment, no merit to the first ground. The appellant was born on 1st January 1999. He was 19 years old when he made his claim for asylum in the UK and attended the screening and substantive interviews. The appellant was represented at the hearing of his appeal. There was no suggestion either prior to, or even during the course of the hearing of the appeal that the quality of the evidence given by the appellant and the weight to be placed on answers given by the appellant during his interviews, should be considered in light of his age, at various times.
11. It is plain from what is said in paragraph [7] of his decision that Judge Borsada’s attention was drawn to what had been said by the respondent in her decision of 13th March 2019 and the reasons given for rejecting the appellant’s account of his nationality and ethnicity. Judge Borsada’s attention was drawn to the appellant’s statement dated 21st November

2019 setting out the appellant's response. At paragraph [9] of his decision, Judge Borsada confirms that in reaching his decision, he has had regard to all of the oral and documentary evidence provided. He confirms that he has read through the Home Office interview and there is nothing on the face of that interview record that indicates that it was conducted anything less than fairly. Judge Borsada noted that at the end of the interview, the appellant was given an opportunity to comment on the interview, and that would have been his chance to explain that he did not understand the interpreter. In reaching his decision, Judge Borsada had regard to the explanation provided by the appellant that he had had problems with the interpreter. Judge Borsada rejected that explanation and found that the appellant's lack of knowledge of matters relating to Ethiopia and of Oromo ethnicity, were in fact indicative of somebody who was not of that ethnicity or nationality and who was therefore attempting to fabricate his claim.

12. Whilst a credibility assessment should take into account a child's age and the fact that children often do not provide as much detail as adults in recollecting events, The appellant was an adult when he arrived in the UK and his claim for international protection was considered. Mr Islam accepts the appellant did not claim at the hearing of his appeal that the lack of correct answers during the interview, or the appellant's lack of knowledge, was down to his age at the material time.
13. Mr Islam speculates that the appellant's lack of knowledge may be attributable to his age. That was not the claim advanced by the appellant. I am quite satisfied that the findings and conclusions reached by Judge Borsada were neither irrational nor unreasonable in the *Wednesbury* sense, or findings and conclusions that were wholly unsupported by the evidence. The findings made and conclusions reached are rooted in the evidence before the First-tier Tribunal and the claims made by the appellant at the hearing of his appeal.

14. The second ground of appeal is headed "Failure to have regard to the evidence with anxious scrutiny". It is said that even if there was a discrepancy in the 'time line' between 2012 and 2016, the fact that the appellant remained in Ethiopia until August 2016 is a key factor. The core of his claim was that he was detained in 2016 and tortured. It is said he was detained on two other occasions during that period and released after his uncle paid a bribe. The appellant claims the judge failed to recognise that the appellant was a minor when he came to the attention of the authorities and any discrepancy does not necessarily undermine his claim when the claim is assessed with anxious scrutiny. It is said that the appellant had problems in Ethiopia between the ages of 12 to 16 and the judge's findings in relation to the core of the claim cannot subsist. It is said that the appellant gave credible evidence in relation to how he came to the adverse attention of the authorities and his evidence is supported by the background material. The appellant claims that in considering the *sur place* activities in the UK, the judge applied an incorrect standard of proof, and failed to make conclusive findings in relation to the *sur place* activities. The appellant also claims the judge failed to assess the evidence relating to the appellant's scarring with anxious scrutiny and failed to make appropriate findings.
15. Before me, Mr Islam submits that the second ground of appeal is that in reaching his decision, Judge Borsada failed to take into account the fact that the appellant was a minor at all material times. Again, Mr Islam accepts that the appellant did not claim that his age had had an impact upon his ability to give a consistent and coherent account of events. He also accepts there was no medical evidence before the First-tier Tribunal regarding the scars to the appellant's torso.
16. This ground too, is without merit. Mr Islam quite properly accepts before me that the appellant did not claim before the First-tier Tribunal that his age at the material time had an impact upon his ability to properly recall matters and to provide an accurate timeline. Judge Borsada considered the evidence before the Tribunal and found that the appellant

failed to maintain a consistent account about his attendance at demonstrations and his arrest and detention. He noted that the appellant did not appear to know when questioned, about the purpose of the demonstrations in 2016, albeit he now claims that he did know the purpose of the demonstration. In reaching his decision Judge Borsada carefully considered the evidence before the Tribunal holistically and had in mind throughout, the explanations provided by the appellant for the inconsistencies in his account. Mr Islam accepts Judge Borsada referred, at paragraph [13], to the photographs of the scars to the appellant's torso. He accepts there was, as Judge Borsada said, no report from an expert regarding the scars. Again I am quite satisfied that the findings and conclusions reached by Judge Borsada regarding the core of the appellant's account concerning his attendance at demonstrations, arrest and detention were neither irrational nor unreasonable, and were open to him following a careful assessment of all the evidence before the Tribunal.

17. The third ground of appeal is headed "Failure to have regard to a material matter". The appellant claims Judge Borsada departed from the current country guidance set out in MB (OLF and MTA - risk) Ethiopia CG [2007] UKAIT 00030, on the basis of the CPIN November 2019 alone. It is said that there was other independent evidence before the judge, and that independent evidence suggests that the country guidance should continue to apply on the basis that the appellant is an OLF sympathiser and came to the adverse attention of the authorities. Before me, Mr Islam submits Judge Borsada erroneously failed to follow the applicable country guidance.
18. This ground too, is without merit. Judge Borsada did not accept that the appellant has provided credible evidence of a fear of persecution in Ethiopia, and he was not satisfied, on the evidence, that the appellant is an Ethiopian national or of Oromo ethnicity. It is against that background that the risk upon return to Ethiopia is considered. On the findings made by the First-tier Tribunal, Judge Borsada was undoubtedly entitled to conclude that the appellant would not be at risk upon return to Ethiopia.

Whether or not Judge Borsada was entitled to depart from the country guidance set out in MB (OLF and MTA - risk) Ethiopia CG, is therefore immaterial. On the findings made, the appellant is not an OLF member or supporter, or someone specifically perceived by the authorities to be a member or supporter who has been previously arrested or detained on suspicion of OLF involvement.

19. Finally, the fourth ground of appeal is headed "Failure to consider Immigration Rules". The appellant claims Judge Borsada failed to consider the immigration rules expressly relied upon by the appellant, and in particular, whether there would be significant obstacles to the appellant's reintegration into Ethiopia. It is said the judge made a finding that the appellant is not an Ethiopian national, and in any event, the appellant left Ethiopia as a minor, and would therefore face significant obstacles to reintegration. Before me, Mr Islam submits Judge Borsada failed to consider whether there are very significant obstacles to the appellant's integration to Ethiopia for the purposes of paragraph 276ADE(1)(vi) of the immigration rules.
20. Mr Islam, quite properly in my judgment, accepts in his submissions before me that the judge's assessment of the Article 8 claim essentially stands and falls with the judge's assessment of the credibility of the appellant, and his claim regarding his ethnicity, nationality and the core of his account. Mr Islam accepts that if it was open to the judge to reject the international protection claim for the reasons given by the judge, then it would be difficult for the appellant to establish that there are very significant obstacles to his re-integration into Ethiopia.
21. It is in my judgement clear that in reaching his decision, Judge Borsada considered all the evidence before the Tribunal in the round and reached findings and conclusions that were open to him on the evidence. A fact-sensitive analysis of the risk upon return was required. In my judgement, the findings made by Judge Borsada were findings that were properly open to him on the evidence before the Tribunal and it was open to him to

conclude that the appellant is not a witness of truth for the reasons set out in his decision. The findings reached cannot be said to be perverse, irrational or findings that were not supported by the evidence. The grounds of appeal in the end amount to a disagreement with the findings and conclusions reached by the First-tier Tribunal.

22. It follows that in my judgment, there is no material error of law in the decision of Judge Borsada, and I dismiss the appeal.

DECISION

23. The appeal is dismissed. The decision of First-tier Tribunal Judge Borsada promulgated on 16th December 2019 stands.

V. Mandalia

Date 11th February 2022

Upper Tribunal Judge Mandalia