



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

Appeal Number: UI-2021-000602  
PA/52604/2020; IA/02234/2020

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 November 2022**

**Decision & Reasons Promulgated  
On 6 March 2023**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN  
DEPUTY UPPER TRIBUNAL JUDGE WILDING**

**Between**

**ANA  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms K Renfrue, instructed by IMK Solicitors

For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Ethiopia. The respondent refused her application for asylum and humanitarian protection and leave to remain in the United Kingdom on human rights grounds, on 30 October 2020. She appealed that decision to the First-tier Tribunal and the appeal was dismissed.
2. Following a hearing on 5 August 2022 Judge Allen found an error of law in the judge's decision and the matter was listed for rehearing in the Upper

Tribunal with the judge's findings of fact in respect of the appellant's history preserved.

3. On that latter point, we agreed with Ms Renfrue that this covered all the judge's factual findings in respect of the appellant's history including the positive findings that the appellant had shown that she was of Oromo ethnicity, that her father was involved with the OLF and detained by the Ethiopian authorities in 2011 and that her family were arrested and interrogated and in consequence fled the country. The judge had also found to the necessary standard that the appellant was involved in surrogate activities with the OLF. We also found that the judge must properly be taken to have found that he accepted the appellant's account of having been arrested while in Ethiopia.
4. In her submissions Ms Ahmed relied on the refusal letter and the review. She noted that no further evidence had been adduced. The issue was that of risk on return to Ethiopia. It was argued that the appellant did not meet the country guidance criteria and also, as a secondary issue, that country guidance should in any event be departed from, though Ms Ahmed accepted that that was a steeper hill to climb.
5. The earlier country guidance was that to be found in MB [2007] UKIAT 00030, which had in essence been maintained in the more recent guidance in Roba [2022] UKUT 00001 (IAC).
6. Ms Ahmed referred to the appellant's evidence in 2017 where she confirmed that on 18 or 19 December 2011 she and her mother and siblings were detained for three days. She herself had been interrogated. She had been released on condition of cooperation with regard to their father's activities. The appellant had been aged 13 at the time.
7. Ms Ahmed argued that this showed the authorities were not interested in the appellant but had just arrested everyone in the household. There was no evidence that the appellant and her mother and siblings were arrested or detained or persecuted before the father's disappearance and she had not been ill-treated. If she were returned the Ethiopian authorities could not connect her to her father's activities. In this regard the guidance in MB was relevant.
8. The appellant had repeated this account at paragraph 8 of the First-tier Tribunal Judge's decision. It had been found at paragraph 25 of the earlier decision that the appellant did not fit into the country guidance risk categories.
9. Ms Ahmed did not agree with what had been said in the error of law decision about the challenge on that point being made very late in the day and that it could not be assumed that the appellant would not fall within the country guidance in MB. The judge in the earlier decision had made a finding that the appellant was not within the country guidance risk category so that was preserved.

10. The appellant's circumstances were different from those in the second headnote in Roba concerning risk if the person had previously been arrested and detained. That was the case but this had not been on suspicion of OLF activities: they just arrested the entire household. Headnote three referred to a significant history of support or, if being so perceived, as being at risk. The country guidance clarified what "significant" meant, at headnote four, but it was not necessarily a high level of support but a perception of an anti-government agenda. This did not apply to the appellant and she did not come close to having a significant history.
11. Ms Ahmed referred to the evidence before the earlier Tribunal at paragraph 11 where the appellant was found not to be politically active in the United Kingdom in contrast to paragraph 29 of the subsequent decision where she said she had attended two demonstrations and a meeting. The judge had made findings about the sur place activities. There was the bundle with the evidence about her joining the OLF in 2017 and a letter from the Oromo community and this was separate from the appellant's bundle but in the stitched bundle. There was also a letter from the OLF, though the author did not say how he knew the appellant but he was a chairman of the OLF. There was a reference to the appellant attending every conference and demonstration and meetings which were open to the public but there was no further evidence to substantiate these points. This was at odds with the appellant's evidence at the most recent First-tier hearing and little weight should be attached to the letter.
12. The guidance in BA (Iran) about demonstrations was relevant. The appellant did not have a significant political profile.
13. HJ (Iran) was also relevant. Any sur place activity had been opportunistic and it would not continue on return to Ethiopia and she did not have a genuine belief in the cause.
14. The refusal letter had addressed the evidence of the expert Ms O'Reilly and Ms Ahmed relied on what had been said at paragraphs 96 and 97 by the judge. The sources were of some age and some people had not been interviewed.
15. As to whether there was scope to depart from the country guidance there was the concession at paragraph 80 in Roba. The evidence did not justify departure from MB. Ms Ahmed accepted that it could be difficult for her to argue for departure from the country guidance but she relied on her primary point that the appellant did not fit the country guidance at all and on the lower standard she had not shown a risk of persecution on return to Ethiopia.
16. In her submissions Ms Renfrue argued first on the issue of departure from the country guidance. There had to be compelling grounds to depart from the country guidance and Ms Renfrue referred to paragraph 2 in Roba relying on the 2019 and 2020 CPIN reports. The respondent had not

shown durable change in Ethiopia that had been argued at the error of law hearing and no further evidence had been filed by the Secretary of State. The 2022 CPIN did not say that at that time there were grounds to depart from Roba.

17. With regard to paragraph 2 of Roba it was clear that OLF members and supporters and those so perceived were at risk if they had been arrested and detained. Reliance was placed on the factual findings of the judge that had been preserved. There was also the appellant's witness statement at page 30 to 33 of the bundle and her statement in 2015. She had been detained by the authorities. She and her family were perceived as OLA supporters via the father's OLF involvement. They were held in detention and their house was destroyed. The appellant had been detained for three days and all her family interrogated and her house destroyed, and that amounted to persecution, and there was a strong indication of serious future harm. The guidance in Roba was relevant to this.
18. With regard to the point that the appellant had not herself been questioned, the detention of the family members was itself persecution. The circumstances were now different from earlier on in that she would return as an adult and had had her own involvement in the OLF over a five year period.
19. It was also the case that she would be perceived as having a significant history via her family. As regards what the perception would be, there were a number of factors. It was necessary for there to be a fact-sensitive analysis. There was a known family history of support for the OLF and the entire family had been rounded up and detained. In Annex 4 in Roba there was a letter from Amnesty International referring to a history of arrests in respect of OLF as being an important risk factor. This was institutional and personal at ground level with regard to families. The extent of the father's involvement in the OLF was relevant. Reliance was placed on the report of Ms O'Reilly. The father's history that was said there to be significant with regard to the appellant's risk on return. He had been arrested and was never seen again.
20. With regard to the appellant's sur place activities, this was a further risk factor. Things had moved on since the decision of the earlier Tribunal and she had become involved with the OLF since 2017 and that was accepted. This was a risk factor. OLF activity led to the risk of persecution. She would return with no documents as a failed asylum seeker and would need the authorities' help to get documents and would also return as a single lone woman with a very young child and would be at a higher risk as a woman. This was argued simply as a risk factor and not as a separate argument. The Ethiopian authorities had been happy to detain her when she was a child and she was at risk of very serious harm.
21. It was also argued that HJ (Iran) applied. She had genuine, political beliefs and there was no finding that this was opportunistic and it was clear that if

she expressed her beliefs on return she would be at risk and it was said on her behalf that she intended to do so from her United Kingdom activities. It would not be open to her to do so if she would be at risk so she was a refugee. She could not be expected to conceal her beliefs and family history or to lie about them. The appeal should be allowed.

22. We reserved our decision.
23. The accepted facts in this case are that when the appellant was 13 she and her mother and siblings were arrested by the police and taken to the police station and detained for several days. During that time the police searched their home and interrogated her mother and brothers about her father's activities, but she and her younger siblings were not interrogated. Her father had been involved with the Oromo Liberation Front (OLF) and detained several times for questioning by the Ethiopian authorities on that account. He had been arrested on 17 November 2011 and had not been seen since.
24. The family were released on the condition that they would cooperate with any future police enquiry into their father's activities. They found that their home had been destroyed by a police search, and her claim was that the way in which they had been treated by the police caused them to leave Ethiopia.
25. The First-tier Judge accepted that she had shown that she was of Oromo ethnicity and her father was involved with the OLF and detained by the Ethiopian authorities in 2011 and the family were arrested and interrogated and as a consequence fled the country.
26. In addition the appellant gave evidence to the First-tier Tribunal in 2021 that she joined the OLF in 2017. She was not on the OLF committee but was a member of the organisation. She had attended two demonstrations and one meeting in person. She said that she attended two meetings each month and actively participated. There was a letter of support from the Oromo community, dated 16 September 2019, stating that she had been an active member of the community since November 2017 and had participated in many community activities including meetings, protests and activities in London against the Ethiopian government. The judge accepted that the appellant had demonstrated that she was involved in sur place activity with the OLF. He noted however that she had attended only two demonstrations in about four years and one meeting in person and the remainder, even if by force of circumstance, had been online meetings. He said that there was little evidence of the degree of her participation or how active she was save that she said that she suggested some fundraising for victims of the political situation in Ethiopia. He found that although she had participated in activities in support of the OLF and Oromo rights, it was at a low level and she was unlikely to have a political profile that would be of interest to the Ethiopian authorities.

27. In the recent country guidance in Roba it was held first that MB still accurately reflects the situation facing members and supporters of the OLF if returned to Ethiopia although the guidance provides some clarification. It is said that OLF members and supporters and those specifically perceived by the authorities to be such members or supporters will in general be at real risk if they have previously been arrested or detained on suspicion of OLF involvement. The guidance goes on to say that those who have a significant history known to the authorities of OLF membership or support or are perceived by the authorities to have such significant history will in general be at real risk of persecution by the authorities, and the term “significant” should not be read as denoting a very high level of involvement or support but rather relates to suspicion being established that a person is perceived by the authorities as possessing an anti-government agenda. This is a fact-sensitive assessment.
28. We have set out the relevant aspects of the claim that were accepted by the judge and that have been preserved. We do not consider that any of those points are weakened, as indeed it is difficult to see how they could be, by the decision of the earlier judge in 2017.
29. The central point here is the appellant’s history. Though she was only 13 she was detained for three days in 2011 and the family home was destroyed and they were only released on the condition that they would report on the father’s activities. As Ms Renfrue pointed out, she would return as an adult rather than as a 13 year old child. Clearly, there has been a interest in this family in the light of the activities of the father, bearing in mind the period of detention and the questioning of at least the appellant’s mother and the destruction of their home by the authorities. In our view, the appellant’s history is such as to bring to her within the guidance in Roba as being somebody who would be specifically perceived by the authorities to be an OLF supporter in light of the family history, in particular her own personal history. It is not without relevance that she has been involved, admittedly at not at a very high level, in OLF activities in the United Kingdom. Whether or not those are known to the Ethiopian authorities is unclear, but tied into that is the HJ (Iran) point argued by Ms Renfrue, and we agree that she could not be expected to lie about her beliefs if she were to be returned to Ethiopia.
30. Accordingly, we find that the appellant on her accepted history falls within the guidance in Roba as a person who faces a real risk on return to Ethiopia on account of her being perceived as an OLF supporter and as a consequence her appeal against the refusal of asylum is allowed.

**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

him or any member of their 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.

A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed

Date 20<sup>th</sup> January 2023

Upper Tribunal Judge Allen