IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002935
First-tier Tribunal No:
PA/52196/2021
IA/06690/2021

THE IMMIGRATION ACTS

Heard at George House
On 23 November 2022

Decision & Reasons Promulgated
On the 01 February 2023

Before

UT JUDGE MACLEMAN

Between

A E

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A J Bradley, Solicitor
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This determination is to be read with:

   (i) the decision of FtT Judge Doyle, PA/13243/2018, promulgated on 16 January 2019;

(ii) the respondent's decision dated 22 April 2021; and

(iii) the decision of FtT Judge Farrelly, PA/52196/2021, dated 20 February 2022.

2. The appellant has permission to appeal against the decision of Judge Farrelly on these grounds:

> 1. The appellant had previously had a hearing before Judge Doyle. Judge Doyle had found her to be a credible witness. Despite some inconsistencies in her evidence nonetheless her account was taken at its highest. In terms of *Devaseelan* this was the starting point for subsequent appeals.
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> 2. … the instant judge has failed to take Judge Doyle's decision as the starting point and has failed to follow the principles of *Devaseelan*. At paragraph 29 despite a previous credibility finding it appears that the judge does not accept that the appellant's brother and sister were killed purely because of the lack of corroboration. No other reason appears to be provided. The IJ fails to state why her credibility is now questioned and on what basis corroboration could have been expected in light of *ST (Corroboration, Kasolo)* UKIAT 119. This error is compounded at paragraph 30. At paragraph 32, 33 and 34 the IJ revisits the matter of her having paid bribes to secure her release and being able to contact her aunt since leaving the country. The reason for revisiting this evidence is opaque to say the least. This being a matter having already been determined by IJ Doyle.
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> 3. At paragraph 35 the IJ appears to disregard the terms of paragraph 339K when considering past persecution. The Immigration rules specifically state:
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> > The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.
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> Further to this the appellant has clearly left detention in an illegal manner following detention for opposition activity … the reasoning of the IJ is wholly inadequate and fails to have regard to the Immigration Rules. When considering whether a bribe was paid the IJ has failed to consider whether the level of ill treatment was an indicator of the ongoing seriousness with which the authorities viewed her behaviour.
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> 4. The IJ further appears to wish to revisit the terms of IJ Doyle's decision at paragraph 37 and 38 despite a passing reference to *Devaseelan*.
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> 5. At paragraph 43 the IJ accepts that those associated with the opposition particularly if they are seen as terrorists could face harassment and could be arrested and detained by the authorities and be abused. He also accepts that it is common enough for individuals to be detained on little evidence then detained and abused then released. The expert report confirms this. The respondent who was not represented at the hearing had accepted that the author of the report

> could be accepted as an expert on the country. The IJ then appears to have taken a selective approach to the report of the expert. The appellant had been active in the UK taking part in *sur place* activities and the expert had confirmed that embassy staff may well be monitoring supporters of opposition groups. The IJ indicates at paragraph 47 that contrary to the finding in the report that the authorities would focus their attention on the more important individuals in the organisation. No adequate reasoning is given for this finding.
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> 6. The IJ proceeds to give a number of findings in relation to the expert report which appears to be conclusions without any sufficient reasons. The conclusions given by the expert appear to be accepted by the IJ or dismissed based on little else than the IJ's own opinion on what the IJ believes is likely to happen without being based on evidence.
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> 7. At paragraph 50 the IJ appears to have concentrated on the release of the appellant without considering the seriousness of her ill treatment. This is contrary to law. At paragraph 51 he states that it is improbable that her low level activity in the UK would place her at any risk. This is contrary to the findings of the expert. It is also contrary to the findings of *YB (Eritrea)* [2008] EWCA Civ 360 and *KS Burma* [2013] EWCA Civ 67. 8. At paragraph 51 the IJ appears to make conclusions without an adequate accompanying reasoning process. This is … unlawful.

3. A further statement by the appellant has recently been sent to the UT. Mr Bradley said this would be relevant only if the case proceeded to remaking the decision.

4. Mr Bradley's submissions closely followed the grounds above. His main themes were:

   (i) Judge Farrelly erred by not taking the favourable credibility findings of Judge Doyle as his starting point; did not explain why he went behind them; and misread the expert report, which does not say that there is no risk to persons with only a low political profile. A minimal profile is enough.

   (ii) Passages in the report, [78 – 79], showed that risk persists after release from detention through a bribe.

   (iii) The Judge appeared to accept the report but then summarily to reject it.

   (iv) Although this might be a marginal case, the appellant had shown that her siblings were killed for political involvement, she had been detained, tortured, and released through bribery.

   (v) Given the above, and the ongoing situation in Ethiopia, a decision should be substituted, allowing the appeal; alternatively, it should be remitted to the FtT.

5. The main points made by Mr Mullen were:

(i) Judge Doyle did not make positive credibility findings, either about the appellant's siblings being killed while she was a child, or about her own alleged later activities. To analyse the case "taken at highest" did not carry any positive finding.

(ii) The case as taken by Judge Doyle at [12(l)] "at its very highest" was only that the appellant was "a previously imprisoned leaflet distributing supporter and now a member who has attended one meeting in the UK".

(iii) Nothing in the decision of Judge Doyle obliged the next Judge hearing the case to accept even that.

(iv) Judge Farrelly was entitled to found partly on absence of documentary evidence. That was not an error of requiring corroboration.

(v) Judge Farrelly's paragraphs setting out the main findings in the report were narrative, not acceptance.

(vi) Even the expert report did not say that everyone from Ethiopia is at risk, although it came close. Judge Farrelly found the report to go rather too far in that respect, and found the appellant's minimal position, after allowing for overstatement of it by her and by the expert, not to amount to risk. No error of law was involved in that assessment of the facts.

(vii) No further elaboration was needed for the finding that the appellant had sought to elevate her profile. That was the clear implication from the evidence and from other findings.

(viii) The examples in the report of ongoing interest after release from detention did not correspond to the case of the appellant, who said she was released without conditions.

(ix) Embassies are all routinely covered by recording video equipment. There was no evidence of the Ethiopian authorities scrutinising footage of persons at protests outside the Embassy so as to target simply anyone present. The report at [134 – 135] showed that monitoring was of persons of a certain profile only.

(x) The conclusions of Judge Farrelly were unsurprising. They were supported by the state of the evidence and by sufficient reasons. No error of law had been shown.

6. Mr Bradley said in reply:

(i) Judge Doyle at [8 (a)] clearly recorded the claim that the appellant's brother and sister were killed for supporting PG7 / Ginbot 7. This was repeated at [12 (a)] and onwards in accepting the claim at its highest.

(ii) Paragraph 339K of the rules, founded upon in the grounds, required good reasons for finding that persecution would not be repeated. Judge Farrelly gave no such reasons.

(iii) On *sur place* risk, it is irrelevant that video recording is routine. The issue is what use oppressive regimes make of such footage.

(iv) Identification was not only from such surveillance but from informants and spyware on phones and other devices; see the expert report at [138] on informants, and at [144].

7. I reserved my decision.

8. I accept that risk from being observed demonstrating outside an Embassy is not negated by such surveillance being a routine contemporary security measure. I am not sure that Mr Mullen intended his submission to go that far, but Mr Bradley is correct that the question is what use is made of the footage.

9. Beyond that, broadly, I prefer the submissions for the respondent, for the reasons advanced, as summarised above.

10. The grounds begin with a misconception that Judge Doyle made favourable findings on credibility. There are none in his decision. It is based on the analysis that the claim failed, even if treated as broadly credible, which is a very different matter.

11. It may have been unhelpful that the SSHD was not represented at the hearing before Judge Farrelly, but it has not been suggested that it was submitted for the appellant (who had other representation at that time) that she began from a favourable assumption.

12. The vague reference in the grounds to *Devaseelan* shows no error of law in the general approach of Judge Farrelly.

13. The grounds allege that the Judge reached a negative conclusion “purely because of the lack of corroboration”, which would be an extraordinary misconception of the law; but at [29] he said that there is “no requirement for corroboration”. All he did was to note its absence, although in a context where perhaps evidence (death certificates or newspaper reports) might have been forthcoming. At [34] he records absence of documentary evidence to confirm detention, without further comment, other than to repeat “no requirement for corroboration”.

14. The vague reference in the grounds to *Kasolo* shows no legal error of requiring corroboration.

15. The principle in paragraph 339K of the rules is as familiar to Judges in this chamber as *Devaseelan* and the position on corroboration. To refer to that rule does not demonstrate error by finding no real risk in this case.

16. Mr Bradley founds on case law regarding the likelihood of oppressive regimes scrutinising and pursuing their opponents, and on the expert report. Neither case law nor the report, however, support a risk to anyone who has ever been outside an Embassy during a protest. There is always a question of fact and degree. The report at [142] cites Human Rights Watch on "some high profile Ethiopians in the diaspora" being "targeted with highly advanced surveillance tools designed to cover monitor online activity and steal passwords and files". At [144] this is extended to accusations of planting spy software on computers of Ethiopians in the UK. None of that shows any error in finding this appellant's minimal profile to present no risk.

17. The expert report says at [129] "…. given that [the appellant] was released from detention following payment of a bribe, I find [her] to be at risk of persecution if returned …". Mr Bradley said that [78 – 79] of the report cited the evidence to support that conclusion. However, the appellant has never contended that her release was conditional. The examples cited are all concerned with "coercive restrictions" to threaten and control persons released. The appellant's account (taken, again, at highest) has not been shown to bring her within that category or to justify the finding in the report at [129].

18. The crucial conclusions of Judge Farrelly are at [47- 51]. He thought that the expert report overstated risk by extending it to "almost anyone with little connection beyond extended family with Ginbot 7 or ethnicity". He had some issues with credibility, taking the view that the appellant claimed a more active role than she had originally, but he noted that the claim previously failed even "at highest". He found that view not to be displaced by the expert report. That was the resolution of a matter of fact and degree which was open to him. It is not shown to have involved the making of any error on a point of law.

19. The decision of the FtT shall stand.

20. The FtT made an anonymity direction. The matter was not mentioned in the UT. Anonymity is preserved at this stage.

H Macleman

24 November 2022
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.