IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002862
First-tier Tribunal No: PA/54936/2022
LP/00069/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 October 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MOHAMMED JAMAL
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Coburn of the Immigration Advice Centre Ltd.
For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 18 October 2023

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Cowx ('the Judge') promulgated following a hearing at Newcastle 6 April 2023, in which the Judge dismissed the appellant's appeal against the refusal of his claim for international protection.
2. The appellant is a citizen of Ethiopia of Oromo ethnicity born in January 1994. The basis of his claim for international protection is a well-founded fear as a result of his political opinion as a supporter of the OLF. The appellant claimed his father was a member of the OLF who was forced to flee in 2012 and that after a lengthy period of state detention following his arrest at an OLF demonstration the appellant fled Ethiopia fearing persecution if he remained. The Secretary of State did not dispute the appellant's claim to be a low-level supporter of the OLF but did not accept that he had received adverse attention from the authorities or was not consequently at risk of persecution.
3. The Judge's finding/assessment of the evidence is set out in section 8 of the determination. The Judge does not find the appellant is a refugee as he does not find there is a reasonable likelihood he has a well-founded fear of persecution and that his story about his family being persecuted by the Ethiopian authorities because support for the OLF is a fabrication. The Judge found the appellant to be a "completely untruthful witness" to the extent the Judge did not feel able to reliably accept that any of his evidence was true [8.1].

4. The Judge notes discrepancies between the account given by the appellant previously and at the hearing which the Judge finds to be "littered with significant inconsistencies which destroyed his credibility" for which examples are given [8.2]. The Judge finds the appellant's attempt to explain discrepancies was "an untruthful attempt to explain away a failure to stick to his original account in an effort to embellish his persecution narrative by claiming there was a family history of involvement with the OLF" [8.3].
5. The Judge sets out what he described as other indicators of an untruthful account from [8.5] leading to his conclusions at [8.16 – 8.17] in the following terms:

> 8.16 The Respondent accepted that MJ was a low-level supporter of the OLF. Having the benefit of hearing MJ's oral testimony in addition to the material which was before the Respondent's when it refused MJ's asylum claim, I am less inclined to believe anything this Appellant says about his life in Ethiopia and his political beliefs or activity. When asked about any political activity since arriving in the UK, his response was limited and was not reflective of a person who is particularly politically active or vociferous. He made a vague and generalised claim to have lobbied the UK government at demonstrations, but the last one he claims to have attended was almost 2 years ago, in London but at a location he did not know or could not recall.
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> 8.17 I therefore find MJ's account to be untrue. I find that MJ arrived in the UK as an economic migrant and not as a refugee. I am not satisfied that he has a genuine fear of persecution. While I accept that political and ethnic oppression may persist in Ethiopia as described by the objective evidence produced in support of the appeal, I have to determine how such oppression relates to this Appellant. He may have supported or sympathised with the Oromo willing Ethiopia where the Oromo make up the majority. But I do not accept that MJ was so active that it came to the adverse attention of the authorities. I do not accept that he was detained in Ethiopia because of his political beliefs because he is not a credible witness and I reject his claim to be in fear of persecution upon return.

6. The appellant sought permission to appeal arguing the Judge failed to make a finding about his support of the OLF and whether he would face a risk of persecution because of his political opinion if returned to Ethiopia, and in light of the appellant having established he is a supporter of OLF, failing to make findings in relation to HJ (Iran) on whether the appellant would face a real risk if his political opinion is exercised in Ethiopia.
7. Permission to appeal was granted by another judge of the First-tier Tribunal on 25 July 2023 the operative part of the grant being in the following terms:

> 2. In essence, the grounds assert the Judge erred in failing to adequately assess the Appellant's risk of being persecuted on return to Ethiopia. I accept this. As noted at [2.5] of the Judge's decision, the Respondent conceded that the Appellant was a low-level supporter of the OLF in Ethiopia. Correspondingly, there is no suggestion the Respondent considered the Appellant's support of the OLF in Ethiopia as anything but sincere and genuine. By stark contrast, the Judge was "less inclined" to believe the Appellant was a low-level supporter of the OLF [8.16], and subsequently found the Appellant's account was "untrue" [8.17]. This is arguably problematic, particularly given that in Kalidas (agreed facts – best practice) [2012] UKUT 00327 (IAC) the Upper Tribunal held that judges should only look behind factual concessions in "exceptional circumstances" and must "immediately" give notice to the representatives if they are minded to do so, thereby according the appellant a reasonable opportunity to address the issue [35]. It is unclear from the Judge's decision as to what extent, if any, the Kalidas principles were adhered to. Correspondingly, I am mindful the Judge's approach to the Respondent's concession is tangibly ambiguous, given the subsequent observation at [8.17] that the Appellant "may have supported or sympathised with the Oromo cause and the OLF". In any event, although the Judge found the Appellant had not come to the adverse attention of the Ethiopian authorities in the past [8.17], there is no discernible consideration of the potential risk of the Appellant coming to their adverse attention in the future. This is a striking omission, particularly given the Judge's

(albeit qualified) acceptance that the Appellant may have manifested his political beliefs and/or opinions whilst in Ethiopia [see above].

Discussion and analysis

8. Mr Coburn relied on the grounds seeking permission to appeal and argued there was no assessment of future risk on return to Ethiopia.
9. On behalf of the Secretary of State Mr McVeety opposed the appeal. He submitted there was no sustainable challenge to the Judge's adverse credibility findings including the finding by the Judge that the appellant may have been a supporter or sympathiser of the OLF, the emphasis being on the word "may".
10. It was argued on behalf of the Secretary of State that when applying the relevant country guidance to the sustainable and unchallenged findings made by the Judge, the appellant was not entitled to succeed. Mr McVeety submitted that although he was not seeking to go behind the concession any error the Judge may have made in relation to the same, as referred to in the grant of permission to appeal, was not material as the appellant could not succeed in any event.
11. Country guidance relating to risk to OLF members/supporters is to be found in two decisions of the Upper Tribunal. The first of these is MB (OLF and MTA , risk) [2007] UKAIT 30, the head note of which reads:

> (1) As at February 2007, the situation in Ethiopia is such that, in general:-
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> (a) Oromo Liberation Front members and sympathisers;
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> (b) persons perceived to be OLF members or sympathisers; and
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> (c) members of the Maccaa Tulema Association;
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> will, on return, be at real risk if they fall within the scope of paragraph (2) or (3) below.
>
> (2)
>
> (2) OLF members and sympathisers and those specifically perceived by the authorities to be such members or sympathisers will in general be at real risk if they have been previously arrested or detained on suspicion of OLF involvement. So too will those who have a significant history, known to the authorities, of OLF membership or sympathy. Whether any such persons are to be excluded from recognition as refugees or from the grant of humanitarian protection by reason of armed activities may need to be addressed in particular cases.
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> (3) Given the proscription of the MTA and the current state of tension on the part of the Ethiopian authorities, the Tribunal considers that MTA members will also be at real risk on return if they have previously been arrested or detained on suspicion of MTA membership and/or of OLF membership or are known or suspected of membership of the MTA. Despite the banning of the MTA, the Tribunal does not consider that the evidence is such as to show a real risk where the extent of the authorities' knowledge or suspicion about an individual relates to something less than membership of the MTA.

12. The second is the more recent decision of Roba (OLF -MB confirmed) (CG) [2022] UKUT 00001, the head note of which reads:

> Country guidance: OLF members and sympathisers (supporters)
> (1) MB (OLF and MTA – risk) Ethiopia CG [2007] UKAIT 00030 still accurately reflects the situation facing members and supporters of the OLF if returned to Ethiopia. However, in material respects, it is appropriate to clarify the existing guidance.
> (2) 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 been previously arrested or detained on suspicion of OLF involvement.
(3) 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.
(4) 'Significant' should not be read as denoting a very high level of involvement or support. Rather, it 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.
(5) Whether persons are to be excluded from recognition as refugees or from the grant of humanitarian protection by reason of armed activities may need to be addressed in particular cases.
1. General application of country guidance
(1) The treatment of country guidance as a presumption of fact means that it will be for the parties seeking to persuade the Tribunal to depart from it to adduce the evidence justifying that departure.
(2) An assessment as to whether to depart from a CG decision is to be undertaken as to: (i) whether material circumstances have changed; and (ii) whether such changes are well established evidentially and durable.
(3) The law, and the principle, are not affected by the age of the CG decision. It may be that as time goes on, evidence will become available that makes it more likely that departure from the decision will be justified. But the process remains the same, and unless in the individual case the departure is shown to be justified, the guidance contained in the CG decision must, as a matter of law, be adopted.
(4) If the parties fail to abide by their general duty in respect of identifying extant country guidance, it remains for the Tribunal to consider such guidance and to follow it.
(5) Any failure by the Tribunal to apply a CG decision unless there is good reason, explicitly stated, for not doing so might constitute an error of law in that a material consideration has been ignored or legally inadequate reasons for the decision have been given.
(6) A party that before the First-tier Tribunal has failed to address extant country guidance or has failed to demonstrate proper grounds for departure from it is unlikely to have a good ground of appeal against a decision founded on the guidance.

13. The Judge clearly considered the evidence and sets out findings that enable a reader to understand what he has found about the level of the appellant's involvement with the OLF and credibility of the claim, and why. I find there is merit in Mr McVeety's submission that if one applies those findings to the country guidance set out above the appellant has not established that he has a profile identified as one that will give rise to a real risk of harm on return.
14. In relation to the HJ (Iran) point, the findings indicate there is no credible evidence that the appellant did anything on behalf of the OLF in Ethiopia, that the appellant's claim to have been detained by the authorities in Ethiopia lacked credibility, and that there was no evidence that he will do anything on return. There was nothing before the Judge to establish that the appellant would undertake activities on behalf of the OLF if returned, or that the reasons for not doing so was as a result of a fear of persecution if he did so.
15. I find having reviewed the decision, evidence, and submissions made, that the appellant has failed to establish that any error in the determination is material as it does not undermine the Judge' core finding that the appellant's profile is not one that would place him at real risk on return by reference to the country guidance caselaw. On that basis I must dismiss the appeal.

Notice of Decision

17. Appeal dismissed.

C J Hanson
Judge of the Upper Tribunal
Immigration and Asylum Chamber
18 October 2023