



**The Upper Tribunal
(Immigration and Asylum Chamber)
AA/05129/2015**

Appeal number:

THE IMMIGRATION ACTS

**Heard at North Shields
On March 15, 2016**

**Promulgated
On April 12, 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

**MRS STR
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Cross (Legal Representative)

For the Respondent: Mr Mangion (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant is a citizen of Ethiopia. The appellant entered the United Kingdom as a domestic worker on August 4, 2014. On September 24, 2014 she claimed asylum and was served with Form IS151A as an illegal entrant. The respondent refused her asylum claim on February 26, 2015 under paragraph 336 HC 395.

2. The appellant appealed that decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on March 25, 2015.
3. The appeal came before Judge of the First-tier Tribunal Fisher (hereinafter referred to as the Judge) on September 14, 2015 and in a decision promulgated on October 16, 2015 he refused the appellant's appeal on all grounds.
4. The appellant lodged grounds of appeal on November 3, 2015 submitting the Judge had erred in his assessment of credibility, the weight to be attached to the medical report and scarring report and the the risk on return having regard to the country evidence. Permission to appeal was granted by Judge of the First-tier Tribunal Andrew on December 1, 2015.
5. In a Rule 24 letter dated December 8, 2015 the respondent opposed the appeal arguing the Judge had made adequate findings on credibility and had had regard to medical evidence and scarring report when assessing the appellant's account.
6. The matter came before me on the above date and I heard submissions from both representatives. I agreed that if there was an error in law I would retain the matter in the Upper Tribunal and deal with the matter without the need for a further hearing.
7. The First-tier Tribunal made an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I extend that order in the light of the sensitive matters raised in this appeal arising out of the appellant's international protection claim. This order prohibits the disclosure directly or indirectly (including by the parties) of the identity of the appellant. Any disclosure in breach of this order may amount to a contempt of court. This order shall remain in force unless revoked or varied by a Tribunal or Court.

SUBMISSIONS

8. Mr Cross relied on his skeleton argument/grounds of appeal and submitted that in assessing credibility the Judge had erred. He had applied too high a standard of proof and had failed to have regard to the medical report when considering her account. Mr Cross also argued that the Judge's concerns about the country expert were unfounded and his opinion that the appellant could be at risk was an objective finding that was open to him to give. In assessing future risk, the Judge erred because he failed to take into account the more recent material including the Amnesty International Report and the respondent's own guidance which both suggest the appellant would be at risk if she were returned. The Judge also failed to address the issue of human trafficking and this also amounted to an error in law.

9. Mr Mangion relied on the Rule 24 response but accepted he did not appear to engage with the country evidence and Home Office reports that had formed part of the evidence before him and he did not appear to deal with the human trafficking part of the appellant's claim. He submitted that for there to be an error in law such errors had to be material and he invited me to find that the Judge's failure to deal with such matters did not amount to a material error.

DISCUSSION AND FINDINGS

10. The appellant's asylum claim was based on the following claims:
 - a. The appellant's claim to be a member of the Oromo Liberation Front (OLF).
 - b. The appellant claimed to have had contact with the OLF in the United Kingdom.
 - c. The appellant was a member of the Oromo Women's Association (OWA)
 - d. She had been trafficked here as a domestic worker from Saudi Arabia
 - e. She would be at risk, if returned, to Ethiopia as a member of both the OLF and OWA.
11. The Judge considered her claims concerning her membership of the OLF and OWA and what she claimed had happened to her because of her involvement with the OLF in Ethiopia and concluded between paragraphs [23] and [29] that much of account was not credible or supported by the evidence she sought to rely on. The Judge concluded that the appellant was a low level member of the OLF in Ethiopia and had joined the OLF in the United Kingdom. The Judge rejected her claim that either she or her husband were detained or that she was wanted by the authorities. The Judge further found that she had not been a victim of trafficking and that she had fabricated her account of detentions to give the appearance that she would be at risk on return.
12. Paragraph [29] of his decision is relevant when considering whether there has been an error in law. The Judge stated:

"I do not accept that she would have a profile on return that would generate a real risk of persecution according to the country guidance. Equally her activities in the United Kingdom have been at a low level and I am not satisfied they would bring her to the adverse attention of the authorities on return."
13. There are three distinct limbs to the appellant's appeal today. The first concerned the credibility of her account of events in Ethiopia. Mr Cross sought to persuade me that the Judge had erred in his

assessment of the evidence. However, for the reasons I now give I reject that part of his appeal.

14. The Judge considered the medical evidence and expert evidence of Dr Trueman along with the account she gave. Mr Cross submitted more weight should have been attached to the scarring report because the Judge found her injuries consistent with her account. However, it is clear from the expert's conclusions and having regard to what "consistent with" means on the *Istanbul Scale* that the scarring could have been occurred for any number of reasons. The Judge had regard to the appellant's account of what happened and gave clear and cogent reasons for rejecting the claims. Whilst Mr Cross argued the appellant had clarified discrepancies it is clear that the Judge rejected her explanation and found her account to be lacking in credibility. With regard to Dr Trueman's conclusions whilst I note Mr Cross's submission that the Judge was wrong to state the expert may have a bias towards the Oromo people, the Judge was still entitled to reject his evidence on the basis his report was based on a finding the appellant had given a credible account and having considered her account the Judge was then entitled, in the round, to reject it.
15. The Judge was therefore entitled to reject the appellant's account of what happened to her in Ethiopia and for those reasons I reject Mr Cross's submissions on grounds one to three.
16. I indicated at the hearing that Mr Cross's submissions on the remaining matters may have merit. The country guidance decision of MB (OLF and MTA-risk) Ethiopia CG [2007] UKAIT 00030 remains good law and binding unless evidence is adduced that would show the position in the country guidance case can be departed from. There was evidence contained in the bundles that needed to be addressed. It would clearly have been open to the Judge to have rejected the evidence but his failure to address the new evidence amounts to an error of law
17. The Judge only made a passing reference in paragraph [29] of his decision to the issue of trafficking and I am satisfied that reasons should have been given to support that brief finding.
18. Both representatives had previously agreed that if an error in law was found then I could remake this decision without a further hearing. I therefore approach this matter on the basis that I would have to remake the decision having regard to future risk to the appellant and having regard to any trafficking issues.
19. I deal firstly with the trafficking issue. The appellant's case was referred to the Competent Authority (CA) to consider whether the circumstances of the case met the definition of a victim of

trafficking. In a decision issued October 21, 2014 the CA found there were no reasonable grounds to believe she met that definition. The reasons for that decision were contained in on Pages F3 to F8 of the respondent's bundle. The CA noted that she willingly left Ethiopia with the assistance of an agent and a false passport to obtain a job with a Saudi family. After arriving in Saudi Arabia she had no further contact with the agent. She worked for a family in Saudi Arabia but with the exception of not being paid the correct amount of money she was neither physically nor sexually abused. She came to the United Kingdom using a valid passport and stayed with the family in London. She claimed to have fled after she claimed she heard talk of returning her to Ethiopia. Whilst the CA accepted there were some trafficking indicators they rejected her claim because she had willingly applied for the job, signed a contract and voluntarily come to the United Kingdom with her and extend her stay with them. In her witness statement the appellant described her circumstances as "slavery" but she nevertheless continued to work for them over a number of years. She claimed that despite the way she was treated she managed to flee the house.

20. In assessing whether the appellant was trafficked I have had regard to the appellant's claims but the account she has given has to be considered against the background of overall credibility. In any event, she was not "trafficked" even on her account from Ethiopia. She claimed to have left the country voluntarily on a false passport and then sought work in Saudi Arabia through an agent. She worked for a considerable period for this family before agreeing to join the family in the United Kingdom.
21. She has had no further contact with the agent in Saudi Arabia and the family claimed not to have know she had entered Saudi Arabia on a false passport and had reported her missing after she disappeared. She did not claim asylum on arrival but claimed asylum some six weeks later.
22. The decision not to accept she was trafficked was a decision open to the CA and I find nothing in the appellant's evidence to persuade me a different decision should have been reached. I reject her trafficking claim.
23. The issue therefore is whether she would face risk of persecution or serious harm if returned to Ethiopia. The Judge found that the appellant was a low level member of the OLF in Ethiopia and had joined the OLF in the United Kingdom.
24. The Country Guidance case of MB (OLF and MTA-risk) Ethiopia CG [2007] UKAIT 00030 states:

"65. As at February 2007, the situation in Ethiopia is such that, in general:-

- (a) OLF members and sympathisers;
- (b) persons perceived to be OLF members or sympathisers;
and
- (c) members of the MTA;

will, on return, be at real risk if they fall within the scope of paragraph 66 or 67 below.

66. In the case of OLF members and sympathisers, the Tribunal finds that the conclusions in paragraph 17 of HA continue to be supported by the background country evidence. 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 (see paragraph 3.6.10 of the Operational Guidance Note).

67. 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."

25. In light of the Country Guidance decision and the Judge's findings the appellant would not face a real risk of persecution or serious harm. The issue I am asked to consider is whether the position has worsened to enable me to depart from this decision. In particular, I was asked to have regard to the Home Office's Operational Guidance Note issued in November 2013 (paragraph 3.15.16). This section of the Guidance indicates that "perceived members or sympathisers of the OLF are likely to be targeted and should they come to the attention of the authorities they are likely to be at risk of persecution. The section concludes that up to date information should be sought from COIS. There is nothing contained within any government or US government reports that sheds further light on this point but the Guidance Note does not appear to deviate from the findings in MB. Paragraph 3.15.16 follows directly on from the paragraph that dealt with the Country Guidance case. The Guidance

therefore does not suggest the situation has changed so much that the Country Guidance of MB should be departed from.

26. Contained within the appellant's bundle is an article prepared by Amnesty International entitled "Because I am Oromo". In considering the effect of this report on the appellant's case I must approach it from the stance that she was a low level supporter who had neither been detained nor arrested (Judge's earlier findings).
27. The report referred to the fact that between 2011 and 2014 at least 5,000 Oromos had been arrested as a result of their actual or suspected peaceful opposition to the government. The majority were detained without charge or trial for some or all of their detention for weeks, months or years. Amnesty International's report listed persons spoken to but all were anonymous sources. The report itself is based on information collated between 2011 and 2014 and whilst there is anonymous evidence of mistreatment there is nothing elsewhere or more recent that provides confirmed details in the way that Dr Love and Dr Trueman did when giving evidence to the Tribunal in 2007 in MB.
28. In fact, Dr Trueman's current report does not appear to take the appellant's case much further. Risks remain for OLF members and some supporters but I find nothing in the Amnesty International report (which is based on information collated between 2011 and October 2014) or the expert report advanced on her behalf that persuades me that the findings in MB should be departed from.
29. In R and Others v SSHD (2005) EWCA Civ 982 the Court of Appeal made clear that any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as a ground for review or appeal on a point of law. In OM (AA wrong in law) Zimbabwe CG [2006] UKAIT 00077 the Tribunal said that country guidance stands until it is replaced or found to be wrong in law.
30. The issue that remained for me to consider was whether the appellant would face a future risk based on the findings made by the Judge and the material not considered by him.
31. I am not satisfied the position has changed sufficiently for me to move away from what the Tribunal said in MB and in those circumstances I dismiss the appellant's appeal on asylum and article 3 grounds.
32. In all other respects the First-tier Tribunal's decision shall remain as stated by it.

DECISION

33. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I have remade the decision but dismiss the appellant's appeals on all grounds.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I make no fee award as I have dismissed the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis