



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04116/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Centre City Tower Birmingham

**Decision & Reasons
Promulgated**

On 13th December 2017

On 22nd December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

A G A

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss R Manning of Counsel instructed by Genesis Law Associates Ltd

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appealed against a decision of Judge E.M.M. Smith of the First-tier Tribunal (the FtT) promulgated on 16th January 2017. The Appellant is an Ethiopian citizen born 1st January 1997.
2. The Appellant was encountered at the Channel Tunnel on 25th August 2015. He was arrested and claimed asylum. His claim was based upon his membership and support of the Oromo Liberation Front (OLF).

3. The Respondent refused the Appellant's claim on 14th December 2015 and the FtT dismissed the Appellant's appeal on all grounds, finding him to be an incredible and untruthful witness. With reference to the Appellant's claimed sur place activities in the UK, the FtT found in paragraphs 41-43 that the Appellant was not a member of the OLF and he had not effectively participated in any OLF demonstrations or meetings.
4. Following dismissal of his appeal the Appellant applied for permission to appeal to the Upper Tribunal. The application was initially refused but a subsequent application was made to the Upper Tribunal, and granted.

Error of Law

5. On 9th October 2017 I heard submissions from both parties in relation to error of law. The Respondent contended there was no material error, as although the FtT may have overlooked evidence in relation to the Appellant's sur place activities, the error was not material because the FtT had considered risk on return, taking the Appellant's case as its highest.
6. I found there was a material error of law disclosed in the FtT decision, and set aside the decision, but preserved the findings made by the FtT in relation to the Appellant's claimed activities in Ethiopia, which had not been challenged in the application for permission to appeal.
7. Full details of the application for permission, the grant of permission, the submissions made by both parties, and my conclusions are contained in my decision dated 10th October 2017 promulgated on 17th October 2017. I set out below paragraphs 19-30 of that decision, which contain my conclusions and reasons for setting aside the FtT decision;
 19. As conceded by Mr Vokes there was no realistic challenge to the credibility findings made by the FtT in relation to the Appellant's claimed activities in Ethiopia. The credibility findings made by the FtT that relate to those claimed activities in Ethiopia, and the Appellant's journey to the UK stand. Those findings are contained within paragraphs 19-32 of the FtT decision.
 20. In my view the FtT erred in considering the Appellant's sur place activities. The error is a failure to take into account and analyse potentially material evidence.
 21. The Appellant supplied two bundles of documents to the FtT. At pages 71-72 of the first bundle there is a letter from Dr Berri, the chairman of the OLF committee in the UK. This letter is dated 20th June 2016. Dr Berri explains that he verified the Appellant's current activities in the UK, in relation to the Oromo community. The Appellant's claimed activities are listed in the letter, and Dr Berri in the third paragraph states;

"From the assessment of his background, interview responses and current participation in the OLF movement, it was satisfactory for me to believe that Mr A is active supporter of the OLF."
 22. The FtT is under no obligation to refer to every piece of evidence produced before it. However in this case reliance was specifically placed upon the letter from Dr Berri as evidence and support of the

Appellant's claimed sur place activities. There is no reference to this letter in the FtT decision, and at paragraph 42 the FtT records;

"I have not been provided with any evidence from other members of OLF to establish that he is a member or has attended any meetings or demonstrations and if I am wrong I do not regard him as having any significant role in the demonstrations that would alert him to the Ethiopian authorities."

23. The FtT is incorrect in stating that no evidence from OLF members has been provided, and it does appear that the FtT overlooked the contents of Dr Berri's letter. This is a failure to consider and analyse potentially material evidence and is an error of law.
24. In addition, as pointed out by the judge granting permission to appeal, there is within the Appellant's second bundle of documents at pages 131-132 a letter dated 20th December 2016 written by Negassa Gerba the secretary of the Oromo Community in the West Midlands (OCWM). This describes the Appellant's "commitment and determination to supporting OLF by participating in many Oromo Community meetings and demonstrations". The letter details events and meetings attended by the Appellant.
25. As with Dr Berri's letter, there is no reference to this letter in the FtT decision, and therefore no consideration and analysis of its contents. This is a second example of the FtT being incorrect at paragraph 42 in stating that no evidence has been provided from OLF members to establish that the Appellant is a member or has attended any meetings or demonstrations.
26. I therefore conclude that it has been demonstrated on behalf of the Appellant, that in relation to his sur place activities, there has been a failure to consider and analyse potentially material evidence, and I am satisfied that this amounts to a material error of law.
27. Therefore the decision of the FtT is unsafe, in relation to consideration of the Appellant's sur place activities and must be set aside. As explained earlier, the credibility findings in relation to the Appellant's claimed activities in Ethiopia and his journey to the UK have not been challenged and are therefore preserved.
28. Although the FtT stated that the Appellant's case was being considered at its highest, I find that the consideration is flawed because potentially relevant evidence has not been taken into account and considered.
29. The decision needs to be re-made. It was not suggested that this is an appropriate case for remittal to the FtT, and I find the appropriate course is to have a further hearing before the Upper Tribunal.
30. Mr Vokes indicated that it was not proposed to call further evidence. The focus of the next hearing will be to ascertain the extent of the Appellant's activities in the UK, and whether those activities would put him at risk if returned to Ethiopia.

Re-Making the Decision

8. At the commencement of the hearing it was confirmed that no further evidence would be called, and further submissions would be made by both representatives in relation to the Appellant's claimed sur place activities, and whether those activities would put him at risk if returned to Ethiopia.
9. I ascertained that the Tribunal had all documentation to be relied upon. This consisted of the Respondent's bundle that had been before the FtT,

and the two bundles submitted on behalf of the Appellant which had been before the FtT. For ease of reference it was agreed that the first bundle which comprises 120 pages would be called Bundle A, and the second bundle which comprises 133 pages would be Bundle B. On behalf of the Appellant five original photographs were produced.

10. I firstly heard submissions on behalf of the Appellant. Miss Manning referred to the letter from Dr Berri chairman of the OLF Committee in the UK, which is dated 20th June 2016 and contained at pages 71-72 of Bundle A. I was asked to note that in the third paragraph Dr Berri described the Appellant's significant participation in meetings and demonstrations and believed the Appellant to be an active supporter of the OLF. Dr Berri voiced the opinion that it was very unlikely that any OLF member or supporter would be safe in Ethiopia, and believed the Appellant would face persecution on his return.
11. Miss Manning then referred to a letter dated 20th December 2016 from Negassa Gerba the secretary of OCWM, contained at pages 131-132 of Bundle B. This letter lists events that the Appellant has taken part in, the latest being a demonstration in Downing Street, London on 16th August 2016 the purpose of which was to attract the attention of international communities in relation to the persecution of Oromo people.
12. Miss Manning commented that the current country guidance on Ethiopia, which is MB (Ethiopia) CG [2007] UKAIT 00030 is of some age, and I was asked to place weight upon the expert report of Dr Trueman dated 8th December 2016, contained within Bundle B. I was asked to find that the FtT had been wrong to reject this report in its entirety, because it was based upon what Dr Trueman had been told by the Appellant, who the FtT found to be an untruthful witness. Miss Manning pointed out the report was not entirely based upon what the Appellant had stated, but contained some objective evidence.
13. I was referred to paragraph 15 in which Dr Trueman sets out the risk on return to Ethiopia for those of Oromo ethnicity, and paragraph 16 in which Dr Trueman gives the opinion that low level activities as described by the Appellant, and even the slightest suspicion of the same, attract serious abuses by government forces in Ethiopia. Dr Trueman believes that the Appellant would be treated as an OLF suspect, and would be interrogated, beaten and tortured.
14. I was referred to the opinion of Dr Trueman at paragraph 17, and asked to note his view that if the Appellant was politically active in the UK, it is likely that this activity would have been noted by the Ethiopian authorities and entered on a central security database as referred to at paragraph 46 of Dr Trueman's report prepared in September 2011.
15. I was asked to find that the evidence indicated that the Appellant's sur place activities would place him at risk if he was returned to Ethiopia.
16. I then heard oral submissions from Mr Mills who pointed out that the FtT had found that the Appellant had fabricated his asylum claim, in relation to

his claimed activities in Ethiopia. I was asked to note that although the Appellant relied upon two letters, the authors of those letters had not attended the hearing to give evidence and answer questions.

17. With reference to Dr Berri's letter, Mr Mills submitted that he had no personal knowledge of the Appellant, and in compiling his letter had relied upon what the Appellant and others had told him.
18. Mr Mills submitted that Negassa Gerba, the author of the other letter relied upon by the Appellant, did not appear to know of the Appellant personally, and it would be appropriate to place little weight upon this letter.
19. With reference to photographs relied upon by the Appellant, I was asked to find that these showed the Appellant in a crowd of people, and there was no evidence to indicate that the Ethiopian authorities monitored attendees at meetings and demonstrations.
20. With reference to the report prepared by Dr Trueman, Mr Mills pointed out that Dr Trueman accepted that he was critical of some decision making made by the Secretary of State and the Tribunal, and he was chairman of the Oromo Support Group, and the report should be considered on the basis that Dr Trueman is an advocate for the Oromo people. Mr Mills submitted that Dr Trueman's opinion went further than the country guidance in MB (Ethiopia) in relation to risk on return for an individual of Oromo ethnicity, and Dr Trueman's opinions were not supported by independent objective evidence.
21. Mr Mills pointed out that at paragraph 14 of his report, Dr Trueman had indicated that he did not know the extent of the Appellant's claimed political activities in the UK. There was no evidence that the Appellant's attendance at any meeting had been filmed and posted on the OLF website or YouTube as referred to by Dr Trueman. I was asked to find that the Appellant did not have a political profile that would attract the adverse attention of the authorities in Ethiopia if he was returned.
22. In response Miss Manning referred to the letter from Negassa Gerba, and submitted that this indicated that he knew the Appellant personally. With reference to Dr Trueman's report, he had at paragraph 14(ix) made reference to independent evidence, that being the Independent Norwegian Organisation, Landinfo which indicated that the Ethiopian authorities have information about people associated with opposition parties in exile, including the OLF.
23. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

24. The burden of proof is on the Appellant and the standard is a reasonable degree of likelihood which is a lower standard than a balance of probability. The issue before me relates to the sur place activities of the Appellant, but before analysing the evidence on that issue it is appropriate

at this point to set out the preserved findings of the FtT which relate to the Appellant's claimed involvement with OLF prior to arrival in the UK. I set out below paragraphs 23-32 of the FtT decision;

23. The Appellant claims that with the help of an agent employed by his maternal uncle he travelled from Ethiopia to Libya. The agent left him there. However, the Appellant had no money so took employment for two weeks. At the end, he was not paid. Despite then being destitute the Appellant was able to obtain a second agent to take him to Italy. I do not accept the Appellant's account. The money paid by his maternal uncle was used by the first agent. Thereafter, the Appellant had to seek employment for which he received no money. I do not accept he could then pay a further agent to take him to Italy. I note that in his SEF interview (question 116) the Appellant was specifically asked if he was forced to work in Libya. He did not say he was. However, by the time his statement of November 2015 is prepared the Appellant states that he was forced to work [14]. If that were so I am satisfied the Appellant would have indicated it in his SEF interview. His failure to do so undermines his account of events in Libya.
24. Having arrived in Italy the Appellant said that the agent had guided him and he followed their instructions which did not include claiming asylum. He then sought the assistance of another agent, again without any available finances, and travelled to France. The Appellant remained in Calais and accepted in evidence to me that he was free to join other groups of men and tried to board up to fourteen lorries. This is in contrast to him previously saying that the reason he did not claim asylum in France was because he was under the instruction of an agent and could not. However, having the ability to join other males and to make as many as fourteen attempts to board a lorry without any interference from the agent establishes that he was not under the instructions of an agent and, therefore, had sufficient freedom in Calais to claim asylum but he failed to do so. I also take note that in his screening interview (RB A2 q1.6) the Appellant when asked "what was the purpose of your trip to the UK?" he replied "in my country I couldn't live I was told UK gives asylum, language is better". It is clear from that reply that it was the Appellant's intention when he left Ethiopia to travel to the UK. I am satisfied the Appellant's account of his journey with various agents is incredible and I am satisfied that his failure to claim asylum in Italy and France are matters in accordance with section 8 that I will factor into his credibility generally.
25. In the Initial Contact and Asylum Registration Form (RB A1) the Appellant is described as single. He was challenged by Ms Alfred as to why at the beginning of the SEF interview (RB B3) he gave a date of marriage when he had earlier said he was single. He was asked whether he was single or married. The Appellant said that he did not understand the interpreter who spoke Amharic during the initial contact and, therefore, the answer he was single was not correct. He said he was married. However, the Appellant accepted that the other information on that form had been correctly translated to the extent he was able to give his date of birth, his place of birth and his employment. I do not accept there was any misunderstanding between him and the interpreter even if Amharic was used and that the Appellant had in fact indicated he was single but chose later to add to his account that he was married.

26. The Appellant claims that even though he was married in 2014 in September 2015 he with two other men moved away from his home to rent a property in Gasara. He states his wife did not follow him. I take note that in the SEF interview he provides his date of marriage as 10th April 2014 yet in his statement dated 24th November 2015 he states it is November 2014. In his evidence to me he was asked how long he had been with his wife and replied by saying “the end of 2014”. He was unable to provide a specific date. These are important discrepancies with the Appellant firstly giving different dates as to his marriage and then not being in a position to tell the court that actual date of his marriage. I am satisfied that this failure and the unexplained move without his wife to another town calls into question whether the Appellant has ever been married.
27. The Appellant was challenged by Ms Alfred why when asked in the screening interview (RB A3 q2.7) whether he had been involved in any political or religious organisation he replied “not to any politics but I supported the opposition in the election”. The Appellant’s case now is that he was politically active and replied to Ms Alfred that the question was put in difficult terms. He was asked to explain how the question was difficult but he could not do so even though the question was repeated.
28. The Appellant states that when he was at home with his mother (SEF RB B16 q74) he kept his involvement with OLF from his family. Ms Alfred asked him why he kept it from them. He replied that he did not want them to get into trouble. However, at the age of 14 he was expelled from school because of his OLF connections so his family would be fully aware of his involvement, which he accepted. In his statement dated 24th November 2015 the Appellant mentions [8] that in March 2014 he encountered difficulties at school and with other students was expelled. However, he goes on to state that he was arrested and detained and whilst detained was tortured. This incident does not feature in his screening interview or his SEF interview and indeed does not appear as a correction to the SEF interview as set out in his statement (AB1 p5). This was clearly a very significant incident which first alerted his family to his involvement with the authorities yet he fails to mention it in his SEF interview or the screening interview. The closest we have is the question (q48) and his answer where he states that whilst he was not involved some students posted some papers that supported OLF and put an OLF flag up. He does not mention being expelled from school, he fails to mention he was arrested and tortured and gives the impression in that answer that the school incident occurred shortly before he left his home to go into hiding with his friends. However, as we have seen he states this incident was in March 2014, he married in November 2014 (or August) and did not leave his home until September 2015. I find the Appellant’s failure to mention his arrest and torture in his SEF interview as a significant failure. I am satisfied that in putting forward his story he has failed to grasp the fact that he has provided different and conflicting dates which are inconsistent with each other. This significantly undermines the Appellant’s account.
29. In May 2015 when the police raided his rental home the Appellant immediately turned to his family for help and then his maternal uncle. There was then no hesitation to involve his family at that stage even though he was not prepared to in 2014 and kept from them his involvement with OLF. By speaking with them, if he is right he put

them at risk. I asked the Appellant when he last spoke to his family and if they had mentioned having any difficulty with the authorities after he left. Following a number of attempts to get him to answer the question he said his mother had not said anything to him in regard to any difficulties. He had last spoken to her in September 2015 and then at new year. If the Appellant's mother had had difficulties with the authorities because this Appellant was a member of OLF I am satisfied she would have told him. By her silence, I am satisfied that having left Ethiopia his mother and other family members have not met with any difficulties from the authorities even though they would have been well-known to them bearing in mind that his father had previously been detained as the Appellant had because of connections to OLF (SEF q54).

30. Having moved away from his home to stay with his friends the Appellant explained in his evidence to me that he and his friends operated in secret (SEF q59). Later in his SEF interview (q65) he said that he delivered leaflets to churches, mosques, schools or playgrounds. To do so requires open delivery not least to the schools and the playgrounds and that is hardly operating in secret and the fact that his colleagues talked openly (q105) to one or two youths from the area militates against secrecy. In his statement (AB1 p6) the Appellant states that "I have not at no time said in my initial interview, witness statement or substantive interview with the HO that I publicly distributed leaflet locally to promote OLF." Nowhere has the Appellant taken issue with his answer (q65) either in this statement or his solicitor's letter dated 3rd December 2015 (RB C1) and that answer is contrary to his assertion in his statement. The only inference one can take from the Appellant's answer to q65 despite his now denial is that leaflets were distributed in public to schools and playgrounds not least market places.
31. The Appellant was asked whether Dr Trueman interviewed him and the Appellant confirmed he had not. It was at this stage that Ms Alfred challenged the Appellant about the contents of paragraphs 7(ii)-7(ix) (page 4). Ms Alfred asked where that information came from for Dr Trueman to include it. It transpired that the statement dated 24th November 2015 had not been provided to the Respondent or the court and was not contained in any of the papers submitted by the Appellant. Ms Glory produced it during her submissions. The Appellant had not been asked at the outset of his evidence to adopt this statement and indeed he had not been shown it. From Dr Trueman's report it can be established that even though he was instructed by fax on 28th November 2016 he had not been sent the Appellant's statement (AB1 p5) dated 12th July 2016. The Appellant's second statement is dated after the instructions.
32. Having considered this Appellant's evidence before me, having witnessed his failure to deal with various questions put to him during his evidence and his reluctance to answer the questions asked I am satisfied the Appellant has lied throughout his various accounts and has lost track of his lies by the time he gave evidence. I do not accept he has established even to the lower standard of proof that he was ever involved with OLF or that he was arrested and tortured or that the events on 25th May 2015 occurred. Taking into account my section 8 findings I am satisfied this Appellant is an untruthful witness.

25. I set out below the head note to MB (Ethiopia) CG which remains the most recent country guidance;
- (1) As at February 2007 the situation in Ethiopia is such that, in general:
 - (a) Oromo Liberation Front Members and sympathisers;
 - (b) persons perceived to be OLF members or sympathisers; and
 - (c) members of the Mecca Tolima Association;will, on return, be at real risk if they fall within the scope of paragraph (2) or (3) below
 - (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.
 - (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 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.
26. The preserved findings of the FtT show that the Appellant fabricated his account of what he claimed had occurred in Ethiopia. The Appellant failed to prove to the FtT that he had ever been involved with the OLF prior to coming to the UK. The FtT found that he had never been arrested or detained on suspicion of OLF involvement.
27. The Appellant relies upon two letters to support his claim to have been involved with the OLF in the UK. Those letters are provided by Dr Berri dated 20th June 2016, and Negassa Gerba dated 20th December 2016. I place limited weight on those letters as the authors did not attend the hearing to answer questions, and the letters are of some age, the most recent being prepared almost twelve months ago.
28. The letter from Negassa Gerba describes the Appellant as an active member of the Oromo community in the West Midlands since September 2015. It is stated that the Appellant has participated in many Oromo Community meetings which appear to take place in community centres. The letter refers to the Appellant taking place in two public demonstrations in London, one on 10th December 2015 at Parliament Square, the other on 16th August 2016 in Downing Street. There is no evidence in this letter of any activities since the funding event on 15th October 2016. Turning to the letter from Dr Berri dated 20th June 2016, it is apparent that Dr Berri has not personally met the Appellant but interviewed him by telephone on 16th June 2016. Dr Berri was told by the Appellant about his activities in Ethiopia, which the FtT found to have been

fabricated. Dr Berri appears to have accepted the Appellant's account of his activities supporting the OLF in Ethiopia.

29. I place limited weight upon this letter as Dr Berri has no direct knowledge of the Appellant. This letter is based on what he has been told by the Appellant, and by consultation with other Oromo organisations. The letter does not, in my view, add anything of substance to the letter written by Negassa Gerba. It is evident that Dr Berri has accepted the Appellant's account, by way of example Dr Berri comments in the third paragraph of his letter that the Appellant "chants slogans with fellow friends during demonstrations".
30. I have considered the photographs supplied by the Appellant. At page 133 of Bundle B there are two photographs of a group of people inside a building. It is not a public meeting held outside. This is said to be at the fundraising event on 15th October 2016 in Birmingham. The Appellant has indicated his position in the group. Without such indication it would be in my view be extremely difficult to identify the Appellant.
31. There are further photographs at pages 73-76 of Bundle A. Two photographs at page 76 show a group of people sitting in a room. It is clearly not a public meeting. There is no indication this meeting is connected with the OLF. There is a further photograph of what appears to be the same meeting at page 74. There are then four photographs which show a crowd of people with an Oromo flag which show the Appellant, in one of the photographs he is holding a slogan calling for cessation of marginalisation, abductions and the torturing and killing of Oromos.
32. I have carefully considered Dr Trueman's report. I attach limited weight to this. I have no doubt whatsoever that Dr Trueman writes in good faith, but I do not find that he can be described as totally independent and impartial. He has been chairman of an Oromo support group and I take that into account when considering his report.
33. The issue that I am considering relates to the Appellant's sur place activities. I place limited weight on Dr Trueman's report on this issue because he has confirmed at paragraph 14(i) that he has not been informed of the extent of the Appellant's political activities in the UK. Dr Trueman in paragraph 14 states that some OLF and other Oromo meetings are filmed and posted on the OLF website. I do not find any satisfactory evidence has been presented in this case to indicate that photographs of the Appellant have appeared on the OLF website. There is no satisfactory evidence to indicate photographs showing the Appellant had been placed on YouTube.
34. Dr Trueman has based his report on what he has been told by the Appellant in relation to his activities in Ethiopia. That account was found by the FtT to be fabricated, and that finding has been preserved. Dr Trueman is of the opinion that the Appellant would be at risk of persecution in Ethiopia. At paragraph 17 Dr Trueman finds that the Appellant's evidence is consistent with him having been a member of an

OLF supporter's cell in Ethiopia. This was found not to be case by the FtT and that finding is preserved. Mr Trueman finds that the Appellant was detained in Ethiopia, and again the FtT found that claim to be fabricated. That finding has been preserved.

35. Dr Trueman is of the opinion that if the Appellant has been politically active in the UK, it is likely that such activity will have been noted by the Ethiopian authorities and entered on a security database. I do not find that there is objective and independent evidence to confirm the existence of such a database. Dr Trueman is of the opinion that because the Appellant would be returned as a refused asylum seeker from the UK he would automatically be suspected of OLF involvement. I do not find that independent and objective evidence to support that assertion has been provided and I do not accept that to be the case. At paragraph 14 Dr Trueman refers to an independent Norwegian organisation, Landinfo, and a report released on 28th April 2015. Dr Trueman points out that Landinfo concluded that association in Norway with an organisation which is illegal in Ethiopia and which is willing to use military force such as the OLF, could result in adverse interest from the Ethiopian authorities on return. I do not find that reference to Landinfo, which is predominantly concerned with the situation in Norway, provides independent and impartial confirmation as to what view the Ethiopian authorities would take, if they were aware of, an individual who attended OLF meetings in the UK.
36. Having carefully considered the Appellant's evidence, and noting that he did not wish to give any further evidence before the Upper Tribunal, the documentary evidence provided on behalf of the Appellant, including in particular the letters written by Dr Berri and Negassa Gerba, photographs provided by the Appellant, and the preserved findings of the FtT I reach the following conclusions.
37. The Appellant fabricated his claim of events said to have occurred in Ethiopia. In the UK he has attended some OLF meetings, and two public demonstrations. He has had photographs taken of himself to prove his attendance. He is not a leader of the OLF, and holds no official position within the organisation. In my view, the Appellant has attended OLF meetings and had photographs taken of himself, in an effort to bolster an asylum claim which was refused in December 2015 subsequently found to have been fabricated by the FtT in January 2017. I do not accept that he is a genuine OLF member or sympathiser.
38. I must nevertheless consider whether the attendance at OLF meetings, and attendance at two demonstrations would put him at risk if returned to Ethiopia. In relation to the factors to be considered, I have taken into account the guidance in BA (demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC). I of course accept that BA relates to an Iranian case, but I find the general guidance contained at paragraph 4 of the head note to be helpful.
39. The nature of the sur place activity must be considered. I have already made the point that the Appellant is not a leader or a mobiliser. In the two

demonstrations he has attended, he is a member of the crowd. He is not speaking to the crowd. There is no satisfactory evidence that he has attended any public demonstration since August 2016. The evidence that he has produced indicates that he last attended a meeting in October 2016. I do not find that evidence has been submitted to prove that the demonstrations attracted media coverage in the UK or in Ethiopia. I do not find that satisfactory evidence has been submitted to prove the Appellant's attendance at the demonstrations could be identified on social media.

40. It is important to consider the identification risk, and whether the Ethiopian regime undertakes surveillance of demonstrations. I find there is insufficient evidence to prove that this takes place. There is no satisfactory evidence that the Ethiopian regime has the capacity to identify individuals for example by way of facial recognition, who have attended demonstrations. There is no satisfactory evidence that the Ethiopian regime has the resources to fit names to faces in a crowd demonstrating. There is no satisfactory evidence that agents of the Ethiopian regime mingle with the crowd in a demonstration.
41. I then have to consider the Appellant's profile. I do not find that he is a committed opponent to the Ethiopian regime and I do not find that he has a significant political profile. I do not find that there is evidence that the Appellant would be at risk because he travelled to the UK and would be returned as a failed asylum seeker.
42. MB (Ethiopia) CG is still country guidance, though the decision is now of some age. I therefore find that the guidance contained therein is still of relevance. The Appellant has not been previously arrested or detained on suspicion of OLF involvement. He does not have a significant history, known to the authorities, of OLF membership or sympathy. The Appellant is an individual who fabricated an asylum claim, and who has subsequently attended some OLF meetings, and two demonstrations, in an attempt to bolster his asylum application. He would not be of adverse interest to the authorities if returned and therefore would not be at risk. He did not undertake activities in support of the OLF when in Ethiopia therefore would not do so if returned.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and was set aside. I substitute a fresh decision as follows.

The appeal is dismissed on asylum, humanitarian protection and human rights grounds.

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 his 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.

This direction is made because the Appellant has made a claim for international protection.

Signed

Date: 15th December 2017

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date: 15th December 2017

Deputy Upper Tribunal Judge M A Hall