



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07710/2017

THE IMMIGRATION ACTS

Heard at Field House
On 2nd October 2018

Determination & Reasons Promulgated
On 30th October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR GETACHEW GASHU TILAHUN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard (Solicitor)
For the Respondent: Mr D Mills, (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge O'Hagan, promulgated on 22 February 2018, following a hearing at Birmingham on 23rd January 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Ethiopia, and was born on 13th May 1987.

The Appellant's Claim

3. The essence of the Appellant's claim is that in April 2015 he joined Patriotic Ginbot 7 ("PG7"). He joined the group with six members. He contributed money. He attended meetings. Every three months he distributed leaflets in Bahir Dar, where he lived with his wife. On 7th August 2016 he attended a demonstration by about 50,000 people. They were protesting in support of various political causes. This included the release of political prisoners. The authorities used violence. They were shooting on the crowd. The demonstration was dispersed. The Appellant was arrested. He was taken to a military camp where he stayed for a day, being transferred to a detention centre where he was held for thirty days. He was regularly beaten. He was released on 7th September 2016. This was after his uncle bribed the authorities. He left Ethiopia clandestinely on 8th September 2016, and travelled through various countries before arriving in the UK to claim asylum.

The Judge's Findings

4. In an extended section, the judge, under the heading "analysis, findings and conclusions", gave reasons for disbelieving the Appellant's account. The judge concluded that the Appellant had fabricated his account (paragraph 38). The claims made by the Appellants were "not" inherently implausible, but are things "that could possibly happen in Ethiopia" but that was not to say that they actually happened (paragraph 39). The judge looked at supporting evidence and the evidence of supporting witnesses (paragraph 42). The judge observed that the Appellant's claim was that the authorities warned him off in 2009. Having imprisoned him the authorities may well have taken the view that a warning would be sufficient to make him desist in the future.
5. On the Appellant's account,

"Nothing happened for another five years, despite his having ignored the warning, and being very active in his anti-government work". This was, on his account, a man who had twice come to the adverse attention of the authorities. He was someone who was on their radar. I find it lacking in credibility that, having given him a warning which he ignored, the authorities would then be content to do nothing over such a lengthy period. I find even more lacking in credibility the account that, when the authorities finally took action in 2014, it was simply to give him another warning. On his account, he again ignored this, and again the authorities did nothing" (paragraph 48).
6. For the purposes of this appeal, the judge's findings in terms of the Appellant's *sur place* activity in the United Kingdom was particularly significant. The judge observed that:

“The evidence was lacking of anything more than attendance at meetings with PG7 supporters. On the evidence before me, at the most, he was engaged in low-level activity. The issue, then, comes down to this: whilst the Appellant was not a figure of adverse interest to the Ethiopia authorities prior to his arrival in the United Kingdom, would he now be so as a result of his actions since coming to this country?” (paragraph 52).

The judge was not of the view that the Appellant would come to the adverse interest of the authorities if he were to be returned. (See paragraphs 53 to 55).

7. In his conclusions, the judge stated that it was not realistic to suppose that the Appellant’s activities would be known to the authorities upon return to Ethiopia. As to the Appellant being required to express a viewpoint for an arrival in Ethiopia, the judge was of the view that,

“Given his past behaviour, it seems to me sensible to suppose he would lie and dissemble freely with the authorities in Ethiopia as he has with the authorities in this country. In terms of whether it would be reasonable to expect him to do so to avoid persecution, it seems to me difficult to say that it would not, given that, on the evidence before me, the Appellant has no genuine political interest, but has merely feigned interest to build an asylum claim” (see paragraph 56(iii)).

8. The appeal was dismissed.

The Grounds of Application

9. The grounds of application state that the judge erred in law given what had been decided in **HJ (Iran)** and given what was said in **RT (Zimbabwe)**. The judge could not assume that if the Appellant were asked about his political ideas and opinion that the Appellant would be expected to lie and would indeed do so. The fact was that it was accepted that the Appellant had engaged in PG7 activities in the UK (see paragraph 41 of the determination). The judge did find it realistic to suppose that the Appellant’s activities would be known to the Ethiopia authorities (see paragraph 56(i)). The judge did state that someone in the Appellant’s position might have acted as he described (at paragraph 47).
10. On 29th May 2018, permission to appeal was granted by the Tribunal on the basis that the judge may well have erred in stating that, with respect to the Appellant’s sur place political activities in the UK, upon which he could be questioned in Ethiopia (see paragraph 56(iii)), that he would be expected to lie.

Submissions

11. At the hearing before me on 2nd October 2018, Mr Howard, appearing on behalf of the Appellant, relied upon the grounds of application. He submitted that given what had been accepted at paragraph 56(i) to 56(iii) it was presumptuous to assume that the Appellant would be expected to lie about his political activities in the UK. He

relied upon **HJ (Iran)** and **RT (Zimbabwe)**. This was a case where the judge had accepted that the Appellant had been engaged in political activities in the UK. It was a case where the judge had accepted that the Appellant, on return to Ethiopia, would be apprehended at the airport. Accordingly, it was simply incongruous to then go on to say that it cannot be said that he would be expected to not lie.

12. For his part, Mr Mills submitted that all too often, litigants forget what **HJ (Iran)** was all about. What it was about was a person's "fundamental characteristics" being denied to that person, in terms of their true identity, and it was unlawful on that basis, to suppress a "fundamental characteristic" of a person, whether that be one of sexuality or of religion, or of political opinion. In **RT (Zimbabwe)** it was the political opinion that was deemed to be the "fundamental characteristic". Where, however, a person had no political opinion as a fundamental characteristic, as the judge found in this case, the principles in **HJ (Iran)** was simply not applicable. The judge had expressly found the Appellant to have put forward a claim that was based upon lies. Even in **Danian [1990] INLR 533**, it was recognised that "opportunistic post-flight activities will not necessarily create a real risk of persecution in the claimant's home country". This was indeed the position here.
13. In **YB (Eritrea) [2008] EWCA Civ 360**, practical guidance was given by the Court of Appeal, where it was said, that:

"The real question in most cases would be what follows for the individual Claimant. If, for example, any information reaching the embassy would be that the Claimant identified in the photograph is a hanger on with no real commitment to the opportunist cause, that would go directly to the issue flagged" (see paragraph 18).

Mr Mills submitted that the Appellant in this case indeed a "hanger on with no real commitment to the opportunistic cause" and he could not be a person would not lie in order to avoid persecution in Ethiopia on arrival.

14. In reply, Mr Howells submitted that even if the Appellant was simply a potential sympathiser, that would be enough. Yet, in this case he was involved with lower level activities. He was attending meetings. This very fact would be one which would attract attention from the authorities and he would be at risk of ill-treatment on the lower standard. I should allow the appeal.

No Error of Law

15. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. First, this is a case where the judge was clear in terms of the Appellant's sur place activities in the UK. He expressly stated that "the evidence was lack of anything more than attendance at meetings with PG7 supporters. On the evidence before me, at most, he was engaged in low-level activity" (paragraph 52).

16. Second, the judge then immediately went on to consider the leading authorities in this regard, referring to **TM (Zimbabwe) [2010] EWCA Civ 916**, and to **YB (Eritrea) [2002] EWCA Civ 360**, before concluding that the crucial question would be whether the Appellant was “a hanger on with no real commitment to the opportunistic cause,” because that would go against him. The judge then specifically considered the **HJ** principle that arises from **HJ (Iran) [2010] UKSC 31** and pointed out, that, “given his past behaviour, it seems to me sensible to suppose that he would lie and dissemble as freely with the authorities in Ethiopia as he has with the authorities in this country”, but the judge came to that conclusion specifically on the basis that “the Appellant has no genuine political interest, but has merely feigned interest to build an asylum claim” (paragraph 56(iii)).
17. It is difficult to see why, against this explicit and clear reasoning, the decision of the judge fell into error. The Appellant had fabricated his claim. He had done so in relation to the account before he came to the UK. He was found to have been of no adverse interest to the authorities in Ethiopia to begin with. He had no sincerely held political views. He had attended demonstrations in the UK, but only to bolster his claim. He had no genuine political conviction. The judge had found, as a question of fact, that the instinct of the Appellant in the immediate first instance, was to generally lie, but that even if he were to tell the truth upon arrival in Ethiopia, this would not lead to any adverse interest in him, because the truth of the matter was that he had no genuine interest in politics. He had manufactured a false claim and the judge had found that he was not at risk.

Notice of Decision

18. There is no material error of law in the original judge’s decision. The determination shall stand.
19. No anonymity direction is made.
20. This appeal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Juss

22nd October 2018