



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11762/2017

**THE IMMIGRATION ACTS**

Heard at Cardiff Civil Justice Centre  
On 10<sup>th</sup> September 2018

Decision & Reasons Promulgated  
On 19<sup>th</sup> September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

TB  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr D Manley of Counsel, instructed by J D Spicer Zeb Solicitors  
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge N J Osborne (the judge) of the First-tier Tribunal (the FtT) promulgated following a hearing on 12<sup>th</sup> December 2017.

2. The Appellant is a female Ethiopian citizen born in June 1994. She arrived in the UK as a Tier 4 Student on 9<sup>th</sup> September 2015 and claimed asylum on 5<sup>th</sup> April 2017. Her claim was refused on 25<sup>th</sup> October 2017 and she appealed to the FtT.
3. The Appellant's claim for international protection was based upon her political opposition to the Ethiopian government. The hearing before the FtT proceeded after the judge had refused an application to adjourn made by the Appellant's Counsel. The judge heard evidence from the Appellant. The judge summarised his conclusions at paragraph 30 of his decision, finding "that the core of the Appellant's account of persecution lacks credibility and is a fabrication designed to gain access to the United Kingdom". The judge dismissed the appeal on all grounds.
4. The Appellant applied for permission to appeal to the Upper Tribunal relying upon three grounds, which are summarised below.
5. Firstly it was contended that the judge erred by refusing the adjournment application. The application had been made to enable documents to be translated which would prove that the Appellant attended meetings arranged by the Ethiopian Unity for Justice in Britain while in the UK, and in particular had attended a meeting on 10<sup>th</sup> August 2016. The adjournment application was also made in order to secure the attendance of a witness, AZ, who had submitted a witness statement dated 5<sup>th</sup> December 2017 but was unable to attend the hearing. It was contended that the judge had not applied the correct principles as outlined in SH (Afghanistan) [2011] EWCA Civ 1284, and Nwaigwe [2014] UKUT 00418 (IAC).
6. It was contended that the judge had found that an adjournment was not necessary as the Respondent conceded that the Appellant had attended the meeting on 10<sup>th</sup> August 2016, and the Respondent had indicated that there would be no cross-examination of the witness and therefore his attendance was not necessary as his witness statement stood as his evidence. The judge had then proceeded to go behind the concession and found that the Appellant had not attended the meeting on 10<sup>th</sup> August 2016, and made no reference to the evidence of AZ contained in the witness statement.
7. The second ground contends that the judge erred at paragraph 29 of his decision in finding that the Appellant did not attend the meeting on 10<sup>th</sup> August 2016. It was submitted that in so doing the judge had acted unfairly as the Appellant was not given the opportunity to explain any inaccuracy in the documents, and the judge had erred by failing to give effect to the concession made by the Respondent contrary to the guidance in Kalidas (agreed facts - best practice) [2012] UKUT 00327 (IAC).
8. The third ground contends that the judge erred by failing to make any clear findings in respect of the Appellant's father's business. At paragraph 21 the judge recorded that the Respondent accepted that the father owned the business as claimed. The Respondent did not dispute that it was a large and successful business. The Appellant's case was that she came from an extremely wealthy background and did not fit the profile of an economic migrant. She could have continued to study in London had she wished to stay in the UK longer, but the judge had failed to engage

with this issue and failed to make adequate findings on the extent of the Appellant's family wealth and its relevance to her overall credibility.

9. Permission to appeal was granted by Judge Ransley in the following terms;
  - “2. Ground (1) has no merit – the judge gave cogent and adequate reasons for his decision that it would not be unjust or unfair to refuse to adjourn the hearing; the decision does not involve any arguable error of law.
  3. Ground (2) – it is arguable that the judge acted unfairly [at 29] by finding contrary to the Respondent's concession, that the Appellant had not attended the meeting of EUJB.
  4. Ground (3) – the judge at [21] recorded that the Respondent accepted that the Appellant's father owns A. G. PLC but the judge failed to make any findings on this issue.
  5. The judge's decision has been shown to involve arguable errors of law that might have made a material difference to the outcome of the appeal. Permission is granted.”
10. Following the grant of permission to appeal the Respondent did not lodge a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008.
11. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

### **The Upper Tribunal Hearing**

12. At the commencement of the hearing I asked the representatives for their views as to whether the grant of permission was a limited grant or whether they believed permission had been granted on all grounds. I pointed out that the notice sent out to the parties by the Tribunal, dated 21<sup>st</sup> February 2018, enclosing the grant of permission, indicated that permission to appeal to the Upper Tribunal had been granted. If there was a restricted grant of appeal, a notice should have advised the parties of the right to make a further application to the Upper Tribunal in relation to the grounds upon which permission had been refused.
13. Mr Manley submitted that the grant of permission was without restriction submitting that in fact Grounds 1 and 2 are inextricably linked. Mr Howells accepted that permission to appeal had been granted on all grounds and I proceeded on that basis.
14. Mr Manley relied upon the grounds which he had settled. It was submitted that the judge had erred by finding that no adjournment was necessary because the Respondent had conceded that the Appellant had attended the meeting on 10<sup>th</sup> August 2016, and accepted the evidence of AZ. The judge then went behind the Respondent's concession, and made no reference to AZ's evidence.
15. Mr Howells accepted that the judge had erred by finding that the Appellant had not attended the meeting on 10<sup>th</sup> August 2016 and had made this decision after the hearing.

It was however submitted that the error was not material given the numerous other findings made by the judge and his conclusion that the Appellant's account was a fabrication was not infected by the error. Mr Howells submitted that the decision of the FtT should stand.

16. In response Mr Manley submitted that the adverse credibility findings made by the judge at paragraphs 24-28 were "not strong" and if the judge had accepted that the Appellant had attended the meeting on 10<sup>th</sup> August 2016, he may have reached a different view on credibility. Of more significance, according to Mr Manley, was that the witness statement of AZ corroborated the Appellant's account and the judge had made no findings upon that evidence.
17. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

18. I firstly consider ground 2 and conclude that the Respondent was correct to concede that the judge erred in law on this point. The judge confirms at paragraph 29 that he noticed a discrepancy in relation to the meeting after the hearing had concluded. That discrepancy was that the meeting took place on 9<sup>th</sup> August 2016 not 10<sup>th</sup> August 2016 as claimed.
19. The judge therefore concluded that this discrepancy undermined the Appellant's claim to have attended the meeting. The Appellant had no opportunity to address that finding as it was not put to her at the hearing. The Appellant would only have been aware that her attendance at that meeting, which was accepted by the Respondent at the hearing, had not been accepted by the judge when she received the decision dismissing her appeal.
20. In my view it was unfair to go behind a concession made by the Respondent, without giving the Appellant an opportunity to address this issue. This amounts to an error of law, but the question that must be answered is whether this error is material.
21. Turning next to ground 3 I find no material error of law. It was not necessary for the judge to make any further findings having accepted at paragraph 21 that the Respondent accepted that the Appellant's father owned a company with a presence in Addis Ababa and Awassa. I do not find that the point made in relation to the company being successful and the Appellant's family being wealthy adds anything of relevance to the Appellant's case. Her account, was that in any event her father cut off her financial assistance and she discovered this when she contacted him by telephone to renew her visa. This was after it is claimed that her father's home was raided by the authorities in December 2016. The judge makes reference to this at paragraph 28.
22. Dealing with ground 1, I do not find that the judge erred in law in refusing the adjournment request. The question that the judge had to decide was whether it was necessary to adjourn in order to have a fair hearing. The judge followed the correct approach as demonstrated at paragraphs 15-17 of his decision.

23. The judge was entitled to conclude that there was no need to adjourn because the Presenting Officer accepted that the documents did not need to be translated, because it was accepted that the Appellant had attended the EUJB meeting on 10<sup>th</sup> August 2016. Mr Manley who appeared before the FtT, is recorded as accepting that there was no merit in the hearing being adjourned for translation of documents, given the concession by the Respondent.
24. There was also no need to adjourn the hearing to enable a witness to attend, given that the Presenting Officer indicated that she had no wish to cross-examine that witness. The judge records at paragraph 16 that he accepted “that typed statement as evidence”.
25. The difficulty is that the judge subsequently went on to make a finding against the Appellant in relation to the attendance at the meeting, and made no reference to the contents of the witness statement.
26. I must therefore consider whether the error of law in not accepting the Respondent’s concession as to the Appellant’s attendance at the meeting is material, and whether the judge erred in law by failing to make reference to the witness statement.
27. In my view the judge should have made reference to the witness statement to confirm what weight if any was placed upon the contents. However, in the circumstances of this case, I do not find that the failure to refer to that evidence amounts to a material error of law. The witness statement does not, in my view, add anything of substance to the Appellant’s claim, given the findings that the judge has made in relation to the core of her claim. Those findings have not been specifically challenged. The witness statement states that the witness visited Ethiopia between July and September 2017. He met the Appellant’s mother who is described as being worried about her wellbeing and safety. The mother told the witness that land had been confiscated from her eldest son by the authorities, and the family are worried as they are under government surveillance. The witness was told that the mother is divorced from the Appellant’s father who is described as a well-known businessman engaged in farming, and the Appellant is her youngest daughter.
28. I do not find that the contents of that witness statement infect or weaken the adverse credibility findings made by the judge in relation to the core of the Appellant’s account.
29. The judge has addressed the core of the account in paragraphs 22–28. The judge considered the Appellant’s claim to have been involved in a documentary film, her claimed arrest, the involvement of Elias and the Zone 9 Bloggers, and the claim that the Appellant’s father’s home was raided in December 2016.
30. The findings made by the judge are that the Appellant is not a reliable witness and her account has been fabricated. The judge has given cogent and sustainable reasons for reaching that conclusion. The findings made by the judge at paragraphs 22–28 are findings that were open to him to make on the evidence. The reasons given by the judge for those findings make it clear why he does not believe the Appellant’s account.

31. Therefore, although the decision of the FtT does contain errors as described above, those errors are not material and do not make the decision unsafe. The appeal must therefore be dismissed.

**Notice of Decision**

The decision of the FtT does not disclose a material error of law. I do not set aside the decision. The appeal is dismissed.

**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.

Signed

Date 12<sup>th</sup> September 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 12<sup>th</sup> September 2018

Deputy Upper Tribunal Judge M A Hall