Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/13064/2016**

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination issued**
on 23 November 2017	**on 03 January 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

M F A
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bradley, of Peter G Farrell, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant advanced her asylum claim at interviews and by statements from 11 May to 23 August 2016 (as recorded at ¶1 of the respondent refusal letter of 18 November 2016). She founded on her and her husband's activities in Ethiopia on behalf of Ginbot 7, an anti-government group.

2. The respondent found the appellant's account not credible.

3. At ¶32 of her letter, the respondent noted the absence of evidence of political activity in the UK: "It is considered inconsistent that you would be prepared to put your life at risk … whilst residing in Ethiopia where you claim you were detained and tortured, but not become involved in any activity whilst residing in a safe country ….".

4. FtT Judge Mill heard the appellant's appeal on 25 and dismissed it by decision promulgated on 28 July 2017. He also rejected the appellant's account of activities in Ethiopia. She made no perceptible challenge on that score in the UT.

5. The appellant at the FtT hearing relied also on activities in the UK.

6. The judge at ¶37 - 38 founded adversely on absence of evidence from Ginbot 7, although the appellant claimed to be the secretary in the Glasgow association and to be in touch with higher party members in the UK.

7. At ¶38 the judge noted that the appellant said she had been unable to advance her interest in Ginbot 7 in the UK until after her asylum interview, but that from 2 days thereafter she made links and attended events and demonstrations in Glasgow and London. He said, "Given her claims to have fled … specifically due to her husband's and her own involvement with Ginbot 7 … it is most likely she would have sought solace and support from the UK branch … shortly after entering the UK … I do not accept her suggestions that she was unable to do so earlier."

8. At ¶40 the judge noted production of photographs of the appellant at a demonstration (or demonstrations?) in the UK but said these were private photographs, not publicly posted or available, and not supportive of her claim.

9. At ¶41 the judge noted production of a still screenshot from a YouTube video, "said to be of a demonstration in London", in which the appellant was "most certainly not prominent", perhaps 1 of 100 participants, and "extremely unlikely to be identifiable from this online material".

10. At ¶48 the judge concluded that the appellant had "no publicly accessible profile connected to Ginbot 7".

11. The appellant applied to the FtT for permission to appeal to the UT, relying on evidence of political repression in Ethiopia and on a Human Rights Watch report, "How Ethiopia spies on its diaspora in Europe": spy agencies trying to silence criticism; use of advanced surveillance tools, including ability to monitor computers and remotely turn on webcams and microphones; a level of sophistication on a par with western governments. The FtT is said to have overlooked this material, by which another conclusion might well have been reached. (The rest of these proposed grounds appear to relate to some other case, and were not repeated in the further application made.)

12. The FtT refused permission. The application was renewed, on the grounds summarised above. Permission was granted by UTJ Bruce on 11 October 2017.

13. Mr Bradley submitted along the lines of the grounds, and relied heavily on ¶18 of *YB (Eritrea) v SSHD* [2008] 360, where Sedley LJ said:

> … the tribunal, while accepting that the appellant's political activity in this country was genuine, were not prepared to accept in the absence of positive evidence that the Eritrean authorities had "the means and the inclination" to monitor such activities as a demonstration outside their embassy, or that they would be able to identify the appellant from photographs of the demonstration. In my

> judgment, and without disrespect to what is a specialist tribunal, this is a finding which risks losing contact with reality. Where, as here, the tribunal has objective evidence which "paints a bleak picture of the suppression of political opponents" by a named government, it requires little or no evidence or speculation to arrive at a strong possibility – and perhaps more – that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist groups. The real question in most cases will be what follows for the individual claimant. If, for example, any information reaching the embassy is likely to be that the claimant identified in a photograph is a hanger-on with no real commitment to the oppositionist cause, that will go directly to the issue flagged up by art 4(3)(d) of the Directive.

14. Mr Matthews submitted that *YB* did not disclose any error by Judge Mill. The findings were of private photographs and a single screenshot of a video posted on the internet. The appellant did not establish that she had any public profile which might attract adverse attention from the Ethiopian authorities. The Human Rights Watch evidence was of targeted surveillance of opposition figures, through computers and the internet. The appellant had denied in evidence that either she or even Ginbot 7 had any access to the internet (¶36 of the decision). *YB* did not lay down a rule that being a face in a crowd at a demonstration against a repressive regime established a risk; the passage cited recognised that all depends on the evidence in the particular case.

15. Mr Bradley in his reply said that the Human Rights Watch evidence showed that the regime was not only looking for those known to it abroad but searching further for their associates, to silence the opposition; the use of internet surveillance included enhanced facial recognition; and that applying *YB*, "little or no evidence" might yield a real risk, a possibility the judge failed to consider. He accepted that he had not referred Judge Mill to *YB*.

16. I reserved my decision.

17. *YB* is a strong and clear statement of how to analyse risk arising from *sur place* activities, but it is not a universal template which tribunals are invariably bound to specify in such cases. It is not a legal error that the FtT did not cite it, when the appellant placed no reliance on it.

18. However, applying *YB* as literally as possible to this case, the following would emerge:

    i. There was objective evidence of "suppression of political opponents" by the Ethiopian regime.
    ii. There was a strong possibility that the foreign legations of the regime not only film or photograph nationals who demonstrate in public, but have informers who can name those filmed or photographed.
    iii. The intelligence services of the regime monitor the internet for information about oppositionist groups.
    iv. The "real question" would be "what follows" for the appellant.

v. Other than one obscure appearance on YouTube *[on which 4 billion videos are viewed daily]* the appellant has no oppositionist history or profile, or presence on the internet.

vi. In the unlikely event that any information were to reach the authorities, it would be that the appellant is "a hanger on with no real commitment to the oppositionist cause".

19. This analysis is the same as the FtT reached at ¶40 – 42.

20. The appellant did not ask for anonymity either in the FtT of in the UT; perhaps oddly, as she bases her case on the pervasive surveillance carried on by the Ethiopian authorities, and the decisions of the UT, at least, are public.

21. Although not requested, and perhaps in an abundance of caution, I have decided at this stage to make an anonymity direction.

22. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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.

23. The appellant has not shown that the making of the decision of the FtT involved the making of any error on a point of law, so that decision shall stand.

Hugh Macleman

27 November 2017
Upper Tribunal Judge Macleman