



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02149/2020 (V)**

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
Working Remotely by Skype for Business
On 18 March 2021**

**Decision & Reasons Promulgated
On 29 March 2021**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BM

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr M Diwyncz, Senior Home Office Presenting Officer

For the Respondent: Mr R Bartram, Migrant Law Partnership

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the respondent (BM). A failure to comply with this direction could lead to Contempt of Court proceedings.

2. For convenience, although this is an appeal by the Secretary of State, I will refer to the parties as they appeared before the First-tier Tribunal.

Introduction

3. The appellant is a citizen of Ethiopia who was born on 10 February 1991. He arrived in the United Kingdom clandestinely on 3 September 2017. On 5 September 2017, he claimed asylum. That claim was refused on 31 January 2018 and his subsequent appeal was dismissed by the First-tier Tribunal (Judge Lloyd) on 29 August 2018. The appellant was subsequently refused permission to appeal to the Upper Tribunal.
4. On 4 December 2019, the appellant made further submissions in respect of his asylum claim. He claimed to be at risk on return to Ethiopia as a result of his political opinion, as a member of the Oromo Liberation Front (“OLF”). In relation to his claim, he now relied upon additional evidence from three witnesses. One of those witnesses (“B”), claimed that he had visited the appellant’s mother in Ethiopia and had been given two documents from the Bedeno District Police dated 7 March 2017 and 24 March 2018 which supported the appellant’s claim that he was wanted by the Ethiopian police as a result of his political activities.
5. On 19 February 2020, the Secretary of State refused the appellant’s claims for asylum, humanitarian protection and under the ECHR.

The Appeal to the First-tier Tribunal

6. The appellant appealed to the First-tier Tribunal. The appeal was heard by Judge Adio on 21 July 2020. The appellant again relied upon the evidence of three witnesses supporting his activities with the OLF and, in the case of “B”, the obtaining of the two police documents which the appellant relied upon before the judge.
7. In his determination, Judge Adio accepted that the documents relied on were reasonably likely to be genuine and that the evidence from the witnesses, in particular “B” who had (he claimed) brought the documents back when he had visited the appellant’s mother in Ethiopia, were plausible and consistent with the background material. As a consequence, the judge accepted the appellant’s involvement with the OLF and that he was wanted by the Ethiopian police. Applying the country guidance decision in MB (OLF and MTA – risk) Ethiopia CG [2007] UKAIT 0030, Judge Adio accepted that the appellant would be of interest to the Ethiopian authorities on return and would be at real risk of persecution because of his political opinion. As a consequence, Judge Adio allowed the appellant’s appeal on asylum grounds and under Art 3 of the ECHR.

The Appeal to the Upper Tribunal

8. The Secretary of State sought permission to appeal to the Upper Tribunal essentially on three grounds.

9. First, the proceedings had been unfair as a number of documents had been submitted by the appellant's representative on the morning of the hearing and the judge refused the Presenting Officer's application for adjournment permitting him only a limited time to consider the new evidence.
10. Secondly, the judge had been wrong to accept the authenticity of the police documents as there was no evidence provided of the translator of those documents and his requisite qualifications.
11. Thirdly, the judge had failed to engage with the respondent's submission that the provenance of the documents was called into question because the appellant had not explained how these documents were provided to his mother, when one was addressed to his wife and at the hearing before Judge Adio no reference had been made to his wife when Judge Lloyd, in the earlier hearing, had not accepted her evidence.
12. On 25 August 2020, the First-tier Tribunal (UTJ Martin) granted the Secretary of State permission to appeal. That permission was not limited but the judge, in particular, commented that it was "arguable that the judge had erred in accepting the documentary evidence without proper consideration of its provenance or translation".
13. In response to directions sent out by the UT, on 8 October 2020 the Secretary of State made further submissions in support of her appeal.
14. The appeal was listed at the Cardiff Civil Justice Centre on 18 March 2021 sitting remotely. The hearing was joined by Mr Diwyncz, who represented the Secretary of State, and Mr Bartram, who represented the appellant, by Skype for Business. Although there were some technical difficulties, Mr Bartram linked into the hearing both by Skype (for the video connection) and by telephone (for the audio connection).
15. Both representatives made oral submissions and Mr Bartram relied upon a skeleton argument which he had submitted to the UT prior to the hearing.

Discussion

The 'Fairness' Point

16. Mr Diwyncz first relied upon, what he characterised as, the 'fairness' point. He submitted that the Presenting Officer, having sought an adjournment in order to read and prepare the documents submitted on the morning of the hearing by the appellant, had unfairly been denied an adjournment of the hearing but had, instead, only been given a period of time on the day in order to read the documents. Mr Diwyncz acknowledged the practicalities of a hearing before the First-tier Tribunal.
17. Mr Bartram accepted that he had submitted a number of documents on the morning of the hearing at 11.30 a.m. The hearing had been adjourned until around 1.45-1.50 p.m. The Presenting Officer's note, which Mr

Diwyncz consulted, indicated that he had been given one and a half hours to prepare but, in fact, discounting any period for lunch, the hearing took place some two hours and twenty minutes after the documents were obtained. Mr Bartram pointed out that the new documents, rather than documents which were already in the respondent's bundle or related to the earlier appeal proceedings, ran to five pages together with background documents in a bundle which, on the face of it, is around 122 pages. The five page bundle consists of the letters of support from the three witnesses together with the two police documents including translations.

18. I do not accept Mr Diwyncz's submissions that the proceedings were unfair. It is worth noting that, following the adjournment granted to the Presenting Officer to consider the new documents, there is no suggestion that the Presenting Officer sought further time or indicated that he had been unable adequately to prepare by reading those documents. No reference is made to any such submission in para 18 of Judge Adio's decision where he deals with this issue.
19. As Mr Bartram submitted, the central issue in this appeal was, of course, the appellant's credibility and his reliance, in particular, upon the two police documents as supporting his claim that he was involved with the OLF and of interest to the Ethiopian police. The documents relating to that were largely those in the appellant's five page bundle and, upon which, it is clear from the judge's determination the Presenting Officer made detailed submissions.
20. Likewise, there is nothing in the determination to suggest that the Presenting Officer was not able to make adequate submissions concerning the background material and whether it justified a departure from MB which was the governing country guidance decision.
21. If the Presenting Officer considered, after having been granted a period to prepare the new material, that he was not in a position to proceed it might be expected that he would have raised the matter again with Judge Adio, as he would have been entitled to be, when the hearing reconvened at 1.45/1.50 p.m. He did not do so and, it would appear, therefore he considered that he had had sufficient time to prepare. In these circumstances, I am not persuaded that it was unfair for the judge not to grant the initial adjournment but to give the Presenting Officer time to prepare and, having done so, to continue with the hearing without any objection then being raised by the Presenting Officer that the time given was, in fact, insufficient.
22. For these reasons, therefore, I reject the first ground upon which the Secretary of State seeks to challenge the judge's decision.

The 'Translation' Point

23. Turning now to the second ground, under the Procedure Rules applicable in the First-tier Tribunal, any document provided to the Tribunal not in

English (apart from documents in Welsh) “must be accompanied by an English Translation” (The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (SI 2014/2604, rule 12(5) (b)). The same rule in substance applies in the Upper Tribunal (see The Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698), rule 13(6)).

24. During the course of the hearing, I drew to the parties’ attention the relevant provision in the Practice Directions for the Immigration and Asylum Chambers (as amended, dated 13 November 2014) concerned with trial bundles and documents that have been translated. Paragraph 8.2(b) the Practice Direction states:

“The best practice for the preparation of bundles is as follows:

....

- (b) where the document is not in the English language, a typed translation of the document signed by the translator, and certifying that the translation is accurate, must be inserted in the bundle next to the copy of the original document, together with details of the identity and qualifications of the translator;”

25. Of course, this sets out “best practice” and is not mandatory, in the sense that a failure to follow it will necessarily amount to an error of law. However, the provision of a translation is, of course, required under the Rules. The need for the typed translation to be signed by the translator and certified as accurate, including giving details of his or her identity and qualifications, goes to the heart of the issue of whether a judge can rely upon a translation as an accurate representation in the English language of the contents of the document in question. It is only if the translation can be relied upon as an accurate translation that the document can properly be assessed and a view taken as to whether or not it is genuine or, at least, a document which can be relied upon by the judge in reaching his findings in an appeal. The Practice Direction does not, necessarily, have to be followed in precise form – only in substance. But, the information which para 8.2(b) refers to must, in the usual case, be provided to a judge if the reliability or authenticity of a document is in issue and must be considered by a judge in translation. Absent such information properly evidenced, unless a translation is conceded by both parties to be accurate, a judge is very unlikely to be in a position properly to determine whether the original document is authentic or reliable because he or she cannot be satisfied that the translation is reliable.
26. In this appeal, the two police documents both in their original and in translation are found in the appellant’s five page bundle. Mr Bartram accepted in the course of his submissions that the translated documents had been translated by a person in Ethiopia whom, he told me, was acceptable to the legal aid authorities and was qualified. He indicated that he thought he had provided the qualifications of the translator to the judge as he had received them from the translator by email. However, he could

not be certain of that and there appears to be no record of such a document in the Tribunal's file. He accepted that the translations did not on their face authenticate, and there was no supplementary document which authenticated, the translation under the signature of the translator.

27. Neither of the translations indicates who was the translator, what (if any) were his qualifications and there is no authentication that the contents of the documents have been accurately translated. Mr Bartram told the judge, as I understand it, that the translator was appropriate and qualified. He also told me that the translator was acceptable to the legal aid authorities. This, however, is not the evidence from, and about, the translator which the judge needed in order to be confident that the translations are accurate translations of the original documents relied upon by the appellant.
28. The judge placed significant weight upon these documents as establishing the credibility of the appellant's claim. He concluded that they were "reasonably likely to be genuine" (see para 46). It is not entirely clear what the judge meant when he said, in the immediately following sentence in para 46:

"I take into account the fact that Mr Bartram as a solicitor has stated he organised the translation of the documents and whilst the weight might be less as Practice Directions were not followed the contents of the letters support the appellant's claim".

29. The contents of the letters, of course, only "support the appellant's claim" if the translations are accurate. Whether or not the judge was entitled to conclude that the documents were reliable required him to be satisfied as to the reliability of the translations. True it is that the Practice Directions were not followed but how it could be said that the judge gave less weight to them as a result, is not easy to fathom. He gave the documents significant weight by concluding that they were reasonably likely to be genuine. However, despite what he was told by Mr Bartram, the judge did not have the necessary material concerning the translator, his or her qualifications and, importantly, the translator's authentication that the translations were accurate. It may be that all of this material was (and is) available and can be provided at a further hearing of the appeal but it was not put before the judge.
30. In my judgment, the judge was not entitled to rely upon the translated documents, and conclude that the original documents were reasonably likely to be genuine, since the translations (which was the only evidence upon which he could rely as to the contents of the documents) were not established to be reliable. Despite Mr Bartram's suggestion, in the course of his submissions, that the documents were not necessarily material to the outcome of the appellant's appeal, it is plain on reading the judge's determination that these documents were central to his conclusion that the appellant's claim was credible and that, therefore, he was at risk on return to Ethiopia. The judge's error of law in relying upon these

documents, in the absence of translations upon which he could rely, makes his positive credibility finding unsustainable.

Other Grounds

31. In the light of that conclusion, it is not necessary to consider the respondent's third ground of appeal. I should also note that Mr Diwyncz specifically eschewed any reliance upon the point raised, not in the grounds of appeal but in the subsequent submissions made by the respondent, that the judge erred in law by failing to depart from the country guidance decision in MB in the light of more recent background evidence. Mr Diwyncz accepted that he was not entitled to rely upon this point, not raised in the grounds of appeal, and upon which permission to appeal had, therefore, not been granted.
32. However, for the reasons I have given, the judge materially erred in law in reaching his positive credibility finding and in concluding that the appellant had established a real risk of persecution on return to Ethiopia because of his political opinion. The judge's decision and findings cannot stand. The decision has to be re-made and none of the judge's findings can be preserved.

Decision

33. For the above reasons, the decision of the First-tier Tribunal to allow the appellant's appeal on asylum grounds and under Art 3 of the ECHR involved the making of a material error of law. That decision cannot stand and is set aside.
34. Given the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Adio.

Signed

Andrew Grubb

Judge of the Upper Tribunal
22 March 2021