



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/02748/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 8 November 2021**

**Decision & Reasons Promulgated
On 20 December 2021**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**T S
(ANONYMITY DIRECTION MADE)**

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Lanigan, Counsel on behalf of the appellant.

For the Respondent: Mr Whitwell, Senior Presenting Officer

DECISION AND REASONS

Introduction:

1. The appellant appeals with permission against the decision of the First-tier Tribunal Judge (hereinafter referred to as the "FtTJ") promulgated on the 25 June 2021, in which the appellant's appeal against the decision to refuse his protection claim was dismissed.
2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Background:

3. The appellant is a national of Ethiopia who made a claim for asylum on 15 November 2019.
4. The factual basis for his claim is set out in the decision of the respondent made on 4 March 2020 and also in the summary set out in the decision of the FtTJ at paragraphs 9 – 16.
5. The core of the appellant's claim was that he was of Oromo ethnicity and that he was an OLF supporter and that he had been supporting this party in secret for a period of 10 years. It was also asserted that during his course of employment from 2015 would pass information to an OLF contact and would also support the OLF financially.
6. As a result of his actions when the appellant returned to Ethiopia in March 2019 the appellant claimed that he had been warned by the police in Ethiopia to stop working for the OLF. He left Ethiopia in October 2019 with the assistance of an immigration officer at the airport and entered the United Kingdom. It is claimed that after he left for Britain, the police had already approached his brother and had ordered him that the appellant report to the police on return to Ethiopia. The appellant as a result claimed asylum.
7. It was further claimed in his account that there had been a 2nd visit from the police and that his brother was warned that if he did not report his arrival immediately he would be at risk.
8. The appellant claimed that a summons to the police had been issued against him as a result of his support for the OLF.
9. Whilst in the United Kingdom the appellant has stated that he has continued his support and participation in political activities in the UK for the OLF.
10. In a decision letter of 4 March 2020 the respondent refused his protection claim. The respondent accepted that the appellant was of Oromo ethnicity and also accepted his work history (see paragraphs 27 – 30). As to his support for the OLF, the respondent considered his responses in interview and found that his account was internally consistent as to the length of time involved with the OLF, he was able to provide details of the flag, when the party was formed and its leader and where their offices were based. This was broadly consistent with the external information. It was accepted that he had given money to the OLF. However it was not accepted that the

appellant had given a credible account of passing information onto the OLF nor was it accepted that he had come to the attention of the authorities in April 2019 when in Ethiopia having been warned to cease his connections with the OLF by an officer in plain clothing. The respondent also considered the country materials and that there had been a change in government in 2018 who had released a large number of members of the opposition (see paragraph 53) and that as the appellant claimed to be a supporter and not a member of the OLF and that his problem started in April 2019 this was after the change in government in 2018 and thus was inconsistent with that country material.

11. As to risk on return, the respondent set out the CG decision of MB (OLF and MTA – risk) Ethiopia CG [2007] UKIAT 0030 and considered it in the context of more recent country materials and concluded that there had been a “cogent and durable change” in regard to the opposition and that there were very strong grounds supported by cogent evidence to depart from the findings in MB. It was further stated that as regards his claimed political opinion taking into account the decisions of RT (Zimbabwe) and HJ (Iran) that there would be no reason to hide his beliefs on return having departed from MB. It was concluded that there was no reasonable degree of likelihood that he would be persecuted on return to Ethiopia. The application was therefore refused.
12. The appellant appealed that decision, and it came before the FtT on 12 March 2021. In a decision promulgated on 25 June 2021, the FtTJ rejected his claim of having passed information to the OLF noting that the appellant was vague about the dates he began clandestine work and what it entailed. The supporting letter from the OLF did not make any reference to passing information to the OLF. The judge also rejected his account that he had been approached by plainclothes policeman in April 2019 and that his account was remarkably vague both interview and the witness statement. There was no information about where the incident took place, and the appellant was able to leave Ethiopia in October 2019. The judge therefore found that the vagueness of the count and lack of detail about the activities suggested that he did not undertake activities that the OLF. There was a lack of substantiation of those clandestine activities and that the appellant had fabricated his account. The judge considered the summons dated 14 February 20 but having considered it in the light of the background country material, as the OLF was removed from the Ethiopian government’s terrorist in July 2018 the document was “at odds” with the background information concerning Ethiopia and alongside the lack of precision about the legal basis of the summons, led the judge to doubt its authenticity. The judge therefore reach the conclusion that he did not come within any of the categories of risk set out in the UT ‘s decision in MB.
13. The FtTJ therefore dismissed the appeal.

14. An application for permission to appeal that decision was issued and on 19 July 2021 permission to appeal was granted by FtTJ Boyes on all grounds.

The hearing before the Upper Tribunal:

15. Ms Lanigan on behalf of the appellant relied upon the written grounds of appeal and her written skeleton argument provided at the hearing on the 8 November 2021.
16. There was no written response filed on behalf of the respondent.
17. I also heard oral submission from the advocates, and I am grateful for their assistance and their clear oral submissions.

The grounds of challenge:

18. Ms Lanigan addressed the grounds by reference to her skeleton argument and the written grounds.
19. The first ground relied upon related to *the approach to credibility (paragraph 7 of the grounds)*. It is submitted that the FTTJ's approach to the Appellant's credibility was fundamentally flawed.
20. The FTTJ criticised the Appellant's account for being vague and held that there was an *'almost complete lack of detail'* (paragraph 36) regarding his activities for the OLF. The FTTJ stated that he *'would expect a much higher level of detail in a true account of activities for the OLF'*.
21. It is submitted that the FTTJ erred by taking a selective approach to credibility, having focused on what he deemed to be insufficient detail, rather than looking at all of the evidence in the round.
22. It is further submitted that the Appellant did provide detailed information in the course of his interview record, witness statement and under cross-examination. His core account remained consistent and unchanged regarding the activities he undertook in support of the OLF.
23. In her oral submissions she submitted that there was evidence before the FtTJ concerning an account of paying money, passing information and using coded messages and attending clandestine meetings. Thus there were details given in his account which should have been considered and that it was wrong to dismiss his account on the basis that he had given a complete lack of detail.
24. She further submitted that even if the appellant's account was lacking in detail it was only 1 of the relevant indicators of credibility.

25. Ms Lanigan referred to the principles set out in KB & AH (credibility-structured approach) Pakistan [2017] UKUT 00491 (IAC), and submitted that the FTTJ failed in his assessment of the Appellant's credibility to consider the evidence in the round, and in particular to consider the internal and external consistency of the Appellant's account alongside his supportive documentation (including the expert report) and the objective evidence (see the comments made by Lord Neuberger in HK v SSHD [2006] EWCA Civ 1037, at paragraph 28:
- ... [I]n many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).*
26. In her oral submissions she stated that it was striking that the decision made no reference to where the lack of detail is discussed (between paragraphs 32 - 36) and that there was a complete failure to consider the background material that was relied upon by the appellant. There had been no challenge to the expert report and there was no reference to the summons. She submitted that there had been a compartmentalised approach to credibility focusing on a selective approach focusing on the lack of detail but ignoring the other relevant evidence. She submitted that the finding reach that the appellant's account was incredible due to a lack of detail at paragraph [36] is a distinct exercise to the subsequent consideration of the supporting documentation as indicated by paragraph 37 where the judge stated, "in light of my findings about the appellant's credibility in relation to his alleged clandestine activities for the OLF I reject the letter from the divisional Court..".
27. Ms Lanigan submitted that it would appear that in dismissing the Appellant's account of his involvement with the OLF, the FTTJ failed to consider whether the Appellant was a sympathetic supporter of the OLF (as opposed to an active informant working for the OLF). Even if the FTTJ did not consider the Appellant's account of espionage credible, the FTTJ ought to have considered whether the Appellant's more general account of support for the OLF was credible. The Appellant was clear that he was a supporter of the OLF in his interview record and witness statement. By failing to make findings regarding the Appellant as a sympathiser of the OLF, the FTTJ was unable to properly apply the relevant Country Guidance case of MB (OLF and MTA - risk) Ethiopia CG [2007] UKAIT 00030.
28. In the circumstances, the FTTJ's approach to the Appellant's credibility was fundamentally flawed and led him into material legal error.
29. As regards the second ground, it is submitted that the FTTJ erred in his approach to and gave inadequate reasons for his findings

regarding the Appellant's account of his involvement in the OLF (by reference to paragraphs 8-12 of the written grounds).

30. At paragraph 33 of the Determination, the FTTJ refers to the letter from the OLF, dated 30 September 2020 ("the Supporting Letter") and states that *'it makes no mention of any espionage on behalf of the OLF or passing of information from the Embassies.'* It is submitted that the FTTJ's approach to this letter is flawed for several reasons:
 - a. There is no reasoning given by the FTTJ as to why he would expect the OLF Chairman in the UK to have information regarding clandestine activities, including those carried out abroad. In her oral submissions she submitted that the evidence included meeting in coffee shops and coded messages and information being passed. The failure to give weight to this letter is therefore not adequately reasoned.
 - b. There is no further consideration given to the Supporting Letter as to the question of the Appellant's more general support for the OLF (as discussed in paragraph 12 above), despite it being directly probative to this live issue.
 - c. The Respondent did not challenge the authenticity of the Supporting Letter.
31. In her oral submissions, Ms Lanigan submitted that the only issue raised by the presenting officer it was that it did not confirm the clandestine actions for the OLF. She further submitted that what was also striking that there was no further consideration of the letter as to whether he was a supporter for the OLF, and this was a "key issue".
32. The 2nd piece of key evidence she submitted was the summons. At paragraph 37 of the Determination, the FTTJ refers to the letter dated 14 February 2020 from the x Divisional Court in Addis Ababa ("the Summons"). He states that Summons *'does not say on what basis - by which I mean legal basis- giving authority to the police - the appellant would be of interest to the authorities'*. The FTTJ goes on to say, *'In light of my findings about the appellant's credibility in relation to his clandestine activities for the OLF I reject the letter from the Divisional Court at x'*. It is submitted that the FTTJ's approach to this key document is fundamentally flawed for the following reasons:
 - a. The Respondent did not challenge the authenticity of the Summons. If it had done so, the original copy could have been provided for verification. At paragraph 15 of the decision, counsel for the appellant stated that the appellant's claim was supported by an "unchallenged summons from the court in Ethiopia".
 - b. The Summons ought to have been considered alongside the other evidence as part of the overall assessment of credibility: the FTTJ was wrong to reject the Summons in light of the adverse credibility findings already made.

- c. The FTTJ was wrong to assess the authenticity of the Summons, in particular, by unfavourably comparing its contents to selective parts of outdated country information. Ms Lanigan submitted that the judge's reference to the July 2020 CPIN was only a partial selection of the evidence and that he substantively placed weight upon events in 2018 which was outdated by the time of the hearing. She referred the tribunal to the country materials in the appellant's bundle.
33. In her oral submissions, Ms Lanigan submitted that it was clear from paragraph 37 of the decision that in the light of the findings made concerning the appellant's credibility the judge rejected the letter. She submitted that this was a compartmentalised approach to credibility and was incorrect. This was a key document which should have formed part of the holistic assessment.
34. The third ground relied upon submits that the FTTJ failed to consider the Appellant's *sur place* activities in the UK in support of the OLF (paragraphs 13-17 of the grounds).
35. It is submitted that the Appellant provided clear and cogent evidence of his ongoing support of the OLF whilst in the UK, including but not limited to the Supporting Letter. She submitted that there were 3 photographs at pages 57 - 59 showing his ongoing involvement in the UK as an OLF supporter. She accepted that there was no specific discussion of this in the appellant's witness statement but the support letter of the OLF in the UK referred to his ongoing involvement and support for the OLF. Ms Lanigan submitted that the judge referred to the photographs at paragraph 9 and referred to the supporting letter but there was no consideration, or any assessment made concerning the question of the appellant's *sur place* activities or his support for the OLF in light of his activities. She submitted that this was a material issue and factual findings were necessary. At no point did the FTTJ make findings in respect of the Appellant's *sur place* activities. The FTTJ was required to do so in order to properly assess the risk that would be faced on return by the Appellant to Ethiopia. Accordingly, the FTTJ materially erred in law.
36. The last ground relied upon is that the FTTJ failed to undertake an adequate assessment of the risk that would be faced by the Appellant if he were to be returned to Ethiopia (see *Inadequate risk assessment (paragraphs 17 - 23 of the grounds)*)
37. Ms Lanigan submitted that the FTTJ failed to taking into account the recent objective evidence provided by the Appellant which sets out the volatile circumstances in Ethiopia. She submitted that the only reference to the material was at paragraph 37 which referred to violence in the Tigray province and reference made to the events in 2018. In particular, the FTTJ made no reference at any point or otherwise seemingly took into account the Appellant's bundle (part

2), which detailed accounts of arbitrary arrests, forced disappearances, extra-judicial killings etc (see further paragraph 23 of the Grounds of Appeal for further detail). She submitted that the judge did not take into account directly relevant evidence concerning the risk in Ethiopia therefore was not able to undertake a full risk assessment for the appellant.

38. Ms Lanigan submitted that paragraph 19 of the written grounds dealt with the issue of being a failed asylum seeker and the risk of return. In this context the FTTJ failed to take into account, and / or give adequate reasons for departing from the expert evidence regarding risk on return. The Expert Report of John Birchall, stated among other things that: *'as a failed asylum seeker, who has been against the current Government by his sympathies for the once illegal OLF, it is likely, in my opinion, that he would be subjected to an intensive interrogation and torture'* (p36 of Report). It is notable that the expert evidence accords with that of MB (OLF and MTA - risk) Ethiopia CG [2007] UKAIT 00030 specifically at paragraphs 39, 42 and 43.
39. In relation to the expert report, she submitted that the only reference to this evidence was a cursory one at paragraph 28. The expert report at page 44 (page 29 of the report) referred to the risk to returning deportees in the United Kingdom and at page 48 the expert report made reference to the DFAT report dated September 2017 that people return to Ethiopian and who are perceived as being political activists oppose the government are likely to face a high risk of being monitored, harassed, arrested and detained particularly if they continue to engage in political activities upon their return. Reference was also made to the significant intelligence gathering capabilities and likely to be aware of significant protests undertaken in other countries and online. She submitted that this evidence chimed with the evidence given before the tribunal in the CG decision of MB.
40. In summary she submitted that the FTTJ failed to take into account the objective evidence, expert evidence, and Country Guidance caselaw in respect of the risk on return. The FTTJ's assessment of risk was therefore fundamentally flawed.
41. Mr Whitwell on behalf of the respondent confirmed that the respondent had not filed a rule 24 response. In his oral submissions, he submitted that the appellant's counsel had recast the grounds and had gone beyond what had been in the written grounds.
42. By reference to the written grounds he submitted the 1st ground was a challenge to the credibility assessment made by the judge and that the active point upon credibility was set out at paragraph 7 when it is asserted that the judge had used the terms "agent" and that this was an irrationality challenge stop he submitted this is different from the grounds today. However looking at the decision of the judge at paragraph 36 the judge gave adequate reasons for his decision; the

vagueness of the appellant's account, the lack of details of activities for the OLF, the lack of any substantiation, internal inconsistencies as to how information would have been passed in Mogadishu, and the vague account of being warned by a plain clothes officer. Thus the judge found the appellant's account as to his activities for the OLF was not true and that the encounter with a plain clothes policeman in Ethiopia did not take place. The grounds are an irrationality challenge but there are adequate reasons given by the FtTJ. He further submitted that it was now submitted that there was a "Mibanga" point raised but that was not in the grounds. In any event the judge directed himself at paragraph 18 in the following way "I have considered carefully all the evidence before me and the submissions of Counsel, whether referred to directly or not" and that this was an adequate self-direction.

43. Dealing with the ground relating to sur place activity, Mr Whitwell submitted that there was nothing in the witness statement which gave any detail of OLF sur place activity. He submitted that whilst it was accepted that the FtTJ did not deal with the issue of sur place activities, there was nothing in the witness statement and nothing to suggest he should have dealt with this. He further acknowledged that there was a reference to continued involvement with the OLF by the photographs and the support letter.
44. Dealing with the last ground, Mr Whitwell submitted that the FtTJ applied the CG decision which he set out at paragraph 27 of his decision. Whilst the grounds referred to the appellant as a failed asylum seeker, the decision in MB at paragraph 61 did not identify as a risk category failed asylum seekers and expressly stated that there was no objective evidence that a failed asylum seeker will be subject to questioning on return. He submitted there was some degree of tension that the country guidance is not taken account of the more recent information. However the reference to the material in the appellant's bundle or refer to someone with a positive profile as an Oromo supporter or an activist which has not been accepted on the factual findings. In terms of the old skeleton argument before the judge, it was not suggested that the evidence was such to go behind the decision in MB, although there was some tension in the decision letter on this issue.
45. Dealing with the summons and the letter of support, Mr Whitwell consulted the notes of the presenting officer noting that there was no cross-examination on the summons. He submitted that at paragraph 37 the judge set out why he did not attach weight to the letter because it was inconsistent with the background evidence. He acknowledged that it had not been the subject of cross-examination during the hearing.
46. Ms Lanigan by way of reply submitted that the skeleton argument before the judge referred to the sur place point at paragraphs 10 (f)

and (35) and there were photographs of the appellant attending demonstrations. There had been oral evidence given to explain his sur place activities (see paragraph 9) and therefore the issue was before the judge and findings were required to be made.

47. At the conclusion of the submissions I reserved my decision.

Decision on error of law:

48. I have given careful consideration to the grounds and the submissions of the advocates and have done so by reference to the decision of the FtTJ and the material that was before the tribunal. Insofar as it has been argued on behalf of the respondent that the grounds of challenge have gone beyond those in the written grounds, I consider that the submissions that have been advanced on behalf of the appellant both in the written skeleton argument and the oral submissions are not properly considered as fresh grounds but seek to enlarge upon those grounds upon which permission has been granted. In particular, the 1st set of paragraphs relate to lack of reason findings and credibility, the 2nd grounds refers to the failure to attach weight to the supporting evidence and the 3rd ground refers to the sur place argument. The final grounds advanced relate to an inadequate risk assessment. Those grounds are those that have been argued before the Upper Tribunal as set out in the written grounds.
49. It will become apparent that I do not accept all of the submissions made on behalf of the appellant but having undertaken an analysis of those grounds, I am satisfied that those I do accept demonstrate the making of an error of law which properly considered is material and thus relevant to the overall outcome. I shall set out my reasons for reaching that view.
50. I intend to deal with the grounds that have been described as “ground 2”. It is submitted on behalf of the appellant that the FtTJ erred in law in his approach to two particular pieces of evidence; firstly the supporting letter and secondly the summons and that both of these were “key documents” and thus relevant to the overall assessment of the credibility of the appellant’s account and also relevant to risk on return.
51. Dealing with the supporting letter, the FtTJ considered this at paragraph [33]. The FtTJ stated as follows: “the letter from the OLF, dated 30 September 2020, refers to the appellant’s open activities for the OLF in the UK but makes no mention of any espionage on behalf of the OLF or passing of information... It says that “it has been established” that the appellant participated in covert meetings in Ethiopia, but it does not say established by whom and it is not the appellant’s case that he participated in meetings in Ethiopia...”

52. In my judgement there is no error in the assessment of the supporting letter as the grounds and submissions contend. In so far as it provided support for the appellant's account of events in Ethiopia, the letter provided no details or any relevant evidence in support of the appellant's account. The judge properly identified that the author of the letter stated "it has been established" that the appellant participated in covert meetings in Ethiopia but that the letter failed to say how those events had been so established or by whom. In essence, the document provided no supporting information in its contents as to how this factual evidence had been so established. Furthermore as a judge found, the letter was not consistent with the appellant's own case that he had not participated in meetings in Ethiopia given his circumstances from 2014. Thus the judge gave adequate reasons for giving a little weight to that supporting letter.
53. However I am satisfied that the 2nd part of the submissions which related to the summons do establish a material error of law.
54. The judge considered the summons at paragraph [37] and set out counsel's submission that it was a "critical piece of evidence". The FtTJ stated:" however, crucially the letter does not say on what basis - by which I mean the legal basis, giving authority to the police - the appellant would be of interest to the authorities. In that regard I note that the background evidence which has been put before me refers to violence in Tigray province or includes information from the OLF itself. A more objective view relating to the OLF itself can be found in the CPIN... The section on the OLF described an agreement with the Ethiopian government in August 2018, following the election of Abiy Ahmed as Prime Minister of Ethiopia, followed by a process of reconciliation. I note that the OLF was removed from the Ethiopian government's terror list in July 2018. The description contained in the purported summons from the X divisional Court of the appellant's activities is therefore both highly emotive and at odds with the background information concerning Ethiopia which, allied with the lack of any precision about the legal basis for the summons, leads me to doubt its authenticity".
55. When considering the submissions, there is some crossover with the 1st ground which challenges the credibility assessment made by the FtTJ and also the issue of risk on return which is addressed by the last ground challenge.
56. I accept the submission made by Ms Lanigan that the judge fell into error in his assessment of credibility. The judge approached the evidence of the summons only having rejected the credibility of the appellant's evidence and without considering the document as part of the whole evidence. This is supported by paragraph 36 where the judge set out in a concluding paragraph beginning with the words "to sum up" and ending with "for those reasons, I find that the appellant's

account of the activities of the OLF is not true and his encounter with a plain clothes policeman in x did not take place.”

57. As is made clear from the decision in Mibanga and cases referencing that decision, a judicial factfinder has a duty to make the decision by reference to all the evidence and that the way a factfinder goes about the task is a matter for them. However not only was the summons considered after reaching the overall adverse credibility assessment based on the other evidence, but the other relevant material error is also the basis upon which the summons was rejected. As the submissions set out, the contents and reliability of the summons was not considered in the light of the background evidence and the country materials before the tribunal. At paragraph 37, the judge referred to the background evidence referring to violence in the Tigray province and as including information from the OLF itself. That was not a full assessment of the background evidence in the appellant’s bundle or that provided by the respondent. The material in the appellant’s bundle and highlighted in the skeleton argument was that notwithstanding the events in 2018, events thereafter in 2019 and 2020 referred to continued human rights abuses and detentions for political supporters of other parties including that of the OLF.
58. I also accept the submission made that the judge relied on a selective reference to the background materials by reference only to the July CPIN which referred to the events that occurred in 2018. The judge cited the respondents CPIN and directly placed weight on the evidence that the OLF was removed from the Ethiopian government’s terror list in July 2018. However, no reference was made to the events that post-dated 2018 and in particular those that occurred in 2019 and 2020 which were relevant to the events that occurred in relation to the appellant’s account and relevant to the summons in the light of its date. It was a result of reliance on that evidence which related solely to 2018 that the judge found the summons to be inconsistent with or “at odds” with the background evidence and led him to reject its authenticity.
59. The difficulty with that as highlighted in the oral submissions was that the material in the appellant’s bundle and set out in the skeleton argument (although without much particularity) was that the evidence relied upon by the respondent and principally set out in the decision letter was not reflected in the evidence provided which post-dated 2018. The country materials in the appellant’s bundle include the following: OHCHR report dated 23/9/2020 referred to continuing arbitrary arrests, forced disappearances, extrajudicial killings and communication blackouts. Political dissent from supporters, members and officials of opposition parties are major targets of these violations. Reference was made to the measures taken by the Prime Minister to address the long-standing political and legal issues but that the positive developments were not sustained. At page 29 of the bundle under heading “arbitrary arrest and detention” reference was

made to a series of mass arrests in East and West Guji, and that Amnesty International reported that they were suspected of supporting, sharing information with and feeding the OLA fighters, the splinter group from the military wing of the OLF. Reference is made to detention of others from other zones of Oromia. At page 36 there was reference to mass detentions and at page 38 there was reference to rehabilitation training. The detainees were also required to confess to supporting the OLA during small group sessions of the rehabilitation training. Self-incrimination included admission of guilt or wrongdoing which including supporting the OLF or criticising the ruling party.

60. Whilst the grounds also challenge the FtTJ's assessment of the expert report, the criticisms levelled were not unreasonable (see paragraph 28). In SS (Sri Lanka) v SSHD [2012] EWCA Civ 155, Stanley Burnton LJ (with whom Maurice Kay and Lewison LJ agreed) observed (at [21]):

"Generally speaking, the weight, if any, to be given to expert (or indeed any) evidence is a matter for the trial judge ... A judge's decision not to accept expert evidence does not involve any error of law on his part, provided he approaches that evidence with the appropriate care and gives good reasons for his decision".

61. Nonetheless the expert report set out information consistent with the background evidence in the appellant's bundle and relevant to the more recent events in Ethiopia including the detention of political supporters including supporters of the OLF and those of Oromo ethnicity. In this respect I do not accept the submission made by Mr Whitwell that the country materials only referred to journalists and activists. Whilst a person's profile has some relevance in establishing risk, the country materials required an overall assessment. The evidence illustrates the need to read the positive reports relating to the events in 2018 and the Prime Minister with caution and balance and the evidence that Ms Lanigan has pointed to refers to the government suppressing dissent by the use of detention and ill treatment and the use of force and set against the background of continuing ethnic tensions.
62. In summary, the reasons given for rejecting the summons did not take account of the more recent country material relevant to Ethiopia and relied on background material referencing events in 2018. There also had been a selective analysis and no reference was made to the conflicting evidence exhibited in the appellant's bundle as to the position in Ethiopia. Whilst the appellant's representative before the judge referred to the summons being "unchallenged", Mr Whitwell also accepted that there had been no cross examination undertaken by the presenting officer of the summons. However that does not mean that the judge necessarily was required to accept the document is reliable. As set out in the decision of QC (verification of documents: Mibanga duty) China [2021] UKUT 0033, the significance of the piece of evidence that emanates from a third-party source may well depend

upon what is at stake in terms of the individual's credibility. The greater the relevance of a particular piece of evidence, the greater the need for the factfinder to show that they have had due regard to that evidence.

63. For those reasons I am satisfied that there is an material error of law in the decision.
64. Ground 1 relates to general issues relevant to the assessment of the appellant's credibility. In light of the establishment of material error of law in relation to the summons and which also touches on issues raised in the 1st ground of challenge and relevant credibility, it is not necessary to consider the 1st section of the grounds that concern the overall assessment of credibility or those grounds which challenge the risk assessment (the last grounds) as both of those issues are necessarily also flawed.
65. I would however observe that the judge did make findings as to the events that occurred in Ethiopia and findings on the quality of the evidence given by the appellant. However as Ms Lanigan submitted even if those factual findings were correct, there were no factual findings made as to the appellant as an OLF supporter. In this contents I note that the evidence set out in the interview and reflected in the decision letter was that the appellant had given an account of OLF support that was internally consistent and externally consistent with the material including providing details of the OLF, its aims its flag, its leadership, and where the offices were on the reasons he supported the party (see paragraphs 31 - 34 of the decision letter) and also why he could not attend meetings due to his occupation. Thus that also formed part of the appellant's credibility assessment.
66. As to the grounds that referred to the lack of findings made as to the sur place claim, I am also satisfied that no assessment was made of this issue as a stand-alone assessment. This may have been because the judge did not accept that he had been active for the OLF whilst in Ethiopia. However, there was evidence before the FtTJ that the appellant had been supporting the OLF whilst in the UK which was evidenced by his attendance at demonstrations set out in the photographs and the letter of support. The skeleton argument that was before the FTT referred to the sur place activities at paragraphs 10, 34 and 35 although as Ms Lanigan properly accepted, there had been little evidence given in the appellant's witness statement concerning his activities, this had been an issue raised and therefore should have been addressed when considering risk on return and in the light of an assessment of the country materials.
67. I do not accept the submission made by Ms Lanigan that there was any error in assessing risk on return as a failed asylum seeker per se. As Mr Whitwell properly observed the tribunal in MB found at paragraphs 61 of its decision that there was no objective evidence to

support the evidence given by Dr Love (as set out at paragraphs 39 – 43 of the decision). Nonetheless, I would accept that there was material in the expert’s report which appeared to be taken from a report made in 2017 and was cited in the decision letter which was more recent than the objective evidence in MB and thus if this was to be rejected, reasons for doing so would be required.

68. As set out above, I have not accepted all the submissions that have been advanced on behalf of the appellant but in relation to the grounds that I do accept, I have reached the conclusion that they were material to the outcome and therefore demonstrate a material error of law.

69. Both parties have submitted that if errors of law were to be found it would require a rehearing as none of the findings can be preserved. I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

70. In light of the grounds which challenged the assessment of the evidence and as there are no findings that can be preserved, I accept their submissions that the right forum for the rehearing is the First-tier Tribunal. I therefore remit the decision to the First-tier Tribunal for a hearing afresh.

71. For the reasons given above, I am satisfied that the decision of the FtTJ did involve the making of an error on a point of law. The decision of the FtTJ is set aside, other than as a record of what was said at the hearing, and the case remitted for a fresh hearing before the First-tier Tribunal.

Notice of Decision.

72. The decision of the First-tier Tribunal did involve the making of an error on a point of law and therefore the decision of the FtT is set aside and remitted to the First-tier Tribunal for a re hearing.

Signed Upper Tribunal Judge Reeds

Dated 10 December 2021

I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.