



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11904/2019 (V)

THE IMMIGRATION ACTS

Heard by way of a remote hearing
On the 14 May 2021

Decision & Reasons Promulgated
On the 28 May 2021

Before

UPPER TRIBUNAL JUDGE REEDS

Between

G F
(ANONYMITY DIRECTION MADE)

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F. Magennis, Counsel instructed on behalf of the appellant.

For the Respondent: Ms R. Pettersen, Senior Presenting Officer.

DECISION AND REASONS

Introduction:

1. The appellant who is a national of Ethiopia, appeals with permission against the decision of the First-tier Tribunal (hereinafter referred to as the "FtTJ") who dismissed his protection and human rights appeal in a decision promulgated on the 2 October 2020.

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.
3. The hearing took place on 14 May 2021, by way of a remote hearing which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. The advocates attended remotely via video. It was not possible to use the skype for business mode of hearing and after a delay we were able to reconvene the hearing using Microsoft Teams. There were no issues regarding sound, and no technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

Background:

4. The history of the appellant is set out in the decision of the FtTJ, the decision letter and the evidence contained in the bundle, including the witness statements.
5. The appellant is a national of Ethiopia and of Oromo ethnicity and originates from the Wollega region. He entered the United Kingdom clandestinely on 21 August 2017 and claimed asylum on the same day, on the basis that he feared persecution as a result of his political opinion.
6. The factual basis of his claim is that he supported the political party called OLF and first started actively supporting the party in 2013 by donating money because of the detention of his parents and he was concerned about the problem of the Oromo people.
7. His family had suffered as a result of their ethnicity and their support and membership of the OLF. His grandfather was killed by the government in 1992 when the OLF was expelled from the government and prominent supporters were hunted by the security forces. He was arrested and killed in detention. The appellant's father supported the OLF financially and both his parents were arrested in 2010 and were detained.
8. The appellant undertook activities on behalf of the OLF which included handing out leaflets and attending demonstrations. The appellant joined and OLF cell along with his cousin and at monthly meetings would discuss Oromo history, current events and provided financial amounts.
9. The appellant claimed that he was detained on 30 August until 3 November 2014. He had been arrested by the security forces when they came to his home

and taken to the police station. He was held there with many other detainees in very poor conditions. He was interrogated by the officers and he was punched and slapped and ill-treated whilst in detention.

10. On 3 November 2014 he was released after receiving a warning that if he were to be involved in OLF again the measures will be more severe. He was made to sign a document that they did not allow him to read.
11. In December 2014 the security forces came and ransacked his house not long after his release. At the time there was a state of emergency, so movement was very restricted. He continued to contribute money to the OLF.
12. In 2015 the government resumed the "master plan" and the appellant continued in his activities for the OLF and participating in demonstrations.
13. In June 2015 he was shopping and was stopped by security forces who removed and burnt his T-shirt because it was red and green. It was said to be an OLF T-shirt that they could use this as a pretext to frighten him. He was taken to the police station for a few hours and asked questions. He was mistreated there.
14. On 28 November 2015 while dropping off leaflets he learned from his cousin that one of the cell members had been arrested.
15. As a result of the detentions and the circumstances in Ethiopia the appellant considered that it was too dangerous to remain. The appellant left Ethiopia on 16th of December 2015 and travelled to Sudan. He spent eight months in Sudan, was detained on 3 August 2016. He travelled via Libya to Italy before travelling to Germany on 24 October 2016. The appellant claimed asylum in Germany and left in July 2017. He travelled to France on 4 August 2017, spent two weeks there before travelling to Belgium. He entered the UK on 21 August 2017 clandestinely and claimed asylum.
16. Since his arrival in the UK, he claimed to have supported the OLF and being politically active by attending three meetings and having attended celebrations.
17. Since leaving Ethiopia, his cousin went missing and his whereabouts are still unknown, and he was active in the same OLF cell as the appellant.
18. The respondent refused his claim in a decision letter dated 14 November 2019.
19. In the decision, the respondent accepted that the appellant was a national of Ethiopia and that he was of Oromo ethnicity.
20. The respondent considered his account of support for the OLF, noting that he had not been politically active before 2013 and had given an inconsistent account as to why he began supporting the party. Initially stating that he began supporting the party in 2013 because of the detention of his parents and he was concerned about the problem of the Oromo people but alternately stated the

reason he began supporting the party with because he believed he would be detained by the authorities if he did not oppose the government. The respondent also considered his account of why he supported the party lacked a depth of personal emotional feeling and was also inconsistent with his initial motivation to support the party.

21. As to his account of work undertaken for the OLF and that he handed out slogans that raised awareness demonstrations and would hand out leaflets inviting people to attend the demonstrations, those documents did not contain information about the OLF. The respondent considered that the appellant had failed to show how political activity was related to his claim support of the OLF.
22. As to the claim of distributing leaflets, it was not accepted that he would have come to the adverse attention of the authorities on the basis of handing out leaflets as this was a low-level activity which was infrequent and not observed by anyone.
23. As to the demonstrations, he stated attended approximately five and the reason for them was associated with the master plan and were peaceful (AIR 44). The respondent noted that he was given multiple opportunities to explain how attendance of the demonstrations is were related to his claim support of the OLF. The respondent considered that his account failed to detail how his claimed political activity was related to the OLF other than a generalised demand for the release of remote prisoners stop it was considered that this raised doubts as to his claim support of the party.
24. The respondent considered his claimed detention on 30 August 2014 until 3 November 2014 when he was released after receiving a warning. The appellant did not have any further adverse attention from the authorities until leaving Ethiopia in 2015.
25. The respondent considered the country information (country policy and guidance note, Ethiopia: Oromos including the Oromo protests, version 2.0, November 2017). Having done so, the respondent considered that the appellant's account of being detained in Ethiopia was consistent with that country information of low-level political activists. It was further considered that his account of being detained following low-level activity was indicative of the arbitrary arrests that occurred in 2014 rather than being specifically identified as an opposition member by the authorities.
26. As to his account that he was threatened by the police in 2013 after being suspected of supporting the OLF, he stated that his T-shirt was taken off and burned by the authorities in 2015. The respondent did not accept that he would have come to the adverse attention of the authorities following this incident as he was able to leave the situation immediately and had no further contact from the authorities.

27. As to his claim that he left Ethiopia because he had been given a final warning does not support the OLF and if he did, he would be killed, the appellant had given inconsistent reasons for leaving Ethiopia.
28. His ability to remain in Ethiopia for over a year after being released without incident indicated low-level political activity which undermined his claim that he was of specific interest to the authorities due to his support of the OLF.
29. As to his activities in the UK and having attended three meetings for the OLF, the respondent took into account that he had not taken part in any demonstration since arriving in the UK, he was not a member of the party and therefore the low-level activity for the party would not be indicative of a significant political profile. Furthermore, his low-level activity in the UK would not be brought into the adverse attention of the authorities in Ethiopia.
30. As to his claim that he posted political content on social media related to the OLF, the appellant had failed to submit evidence of that despite his representatives requesting a further extension of time
31. It was not accepted that he was a supporter of the OLF, and his claim was rejected.
32. As to his ethnicity as an Oromo, consideration was given to his claim that he will be at risk upon return on that basis. The respondent took into account that he had not faced persecution, discrimination, or mistreatment in Ethiopia on the basis of his ethnicity nor had he come to the adverse attention of the authorities prior to becoming politically active and after being released from detention in 2014 he was able to reside in Ethiopia one year without incident. Consideration was given to the CPIN.
33. As to section 8 of the 2004 Act, the respondent took into account the journey undertaken by the appellant and that he travelled through Belgium, France and Italy which were considered safe countries. Furthermore, he claimed to have spent five weeks in Italy in two weeks both in France and Belgium and that he failed to take advantage of a reasonable opportunity to make an asylum human rights claim whilst in a safe country. Failure to do so damaged his credibility.
34. As to an assessment of his claim, consideration was given to the country guidance decision in MB (OLF and MTA - risk) Ethiopia CG [2007] UKAIT 00 30 which held that OLF members and sympathisers and those specifically perceived by the authorities to be such members or sympathisers will in general be it a real risk of persecution if they have been previously arrested or detained on suspicion of OLF involvement. So, to all those who have a significant history, of OLF membership or sympathy which is known to the authorities (paragraph 66).
35. However, as his account and credibility of the OLF had not been accepted, he did not meet the criteria set out in the CG case.

36. Furthermore, consideration was given to country materials set out in the CPIN, Ethiopia: opposition to the government, version 3.0, August 2019, and that since the CG determination of MB the country situation had improved. During 2018 the Prime Minister removed the designation of the OLF, ONLF and Ginbot as terrorist organisations and welcomed back high-profile leaders back to Ethiopia where they can register as political parties (although there is no indication that this is yet happened). Hundreds of thousands of people gathered in Addis Ababa to welcome back OLF leaders which is reported to have passed without incident. A number of high-profile prisoners had also been released and/or pardoned, including deputy leader of Ginbot 7 who been detained since 2014.
37. Thus, the respondent considered that the country information indicated there had been cogent and durable changes in regard to the opposition generally and former and current armed groups in particular and thus there were very strong grant supported by cogent evidence to depart from the findings in MB.
38. The respondent considered that based on that material, and whilst it was not accepted that he was a supporter of the OLF, even if he were, it was not accepted that he would be at risk of persecution or serious harm on return to Ethiopia.
39. The remainder of the decision letter considered Article 8.
40. The appellant appealed that decision to the FtT (Judge Lever) on the 22 September 2020. In a decision promulgated on 2 October 2020 the judge dismissed his appeal.
41. The FtTJ set out his factual findings and analysis of the evidence at paragraphs [14 -39].
42. I summarise them as follows:
 - (1) the appellant is from Ethiopia and is of Oromo ethnicity.
 - (2) There was nothing inherently implausible in him supporting the OLF and being sympathetic to the general views and ideas of the OLF.
 - (3) It is further not implausible that he would like many tens of thousands have been involved in demonstrations in the 2013 - 2014.
 - (4) Earlier at [15] the FtTJ set out the country information in the fact-finding mission to Ethiopia dated February 2020 and the general commentary made concerning the current position of Oromo people and the OLF. The judge considered that whilst it post-dated the appellant's time in Ethiopia, paragraphs 7.1.127.3.9 provided information that during the appellant's time in Ethiopia at the OLF had a large support base amongst or among people and that the flag, name, and organisation of the OLF resonated amongst the Oromo population.

- (5) Furthermore at [15] the judge referred to the CPIN dated November 2017 which referred to the demonstrations in Ethiopia which noted that there were “largely spontaneous demonstrations involving thousands of people. Tens of thousands were arrested and those arrested included “grassroots supporters”, not just leaders and organisers. Many of those grassroots supporters were released and those left detention at that stage (2017) were in the main suspected leaders. It is said violence against people is largely arbitrary and it is unlikely that the authorities were able to have an interest in or identify individuals. Therefore, taking part in protest was unlikely to result in ongoing adverse attention.
 - (6) Based on that material, the judge accepted that in the period 2013 – 2015 there were large protests in Ethiopia amongst the Oromo people.
 - (7) In light of the material, the judge found that it was not implausible that the appellant would like many tens of thousands have been involved in demonstrations in 2013 – 2014 I may well have been arrested and detained as a result.
 - (8) At paragraphs [16 – 20] the FtTJ considered the medical report and psychiatric report provider on behalf of the appellant and set out his reasoning as to the deficiencies in that evidence.
 - (9) However, based on the medical report that referred to the scars on the appellant, the judge found that he “may well have been arrested and detained as a result. I accept the possibility that he suffered ill-treatment and injuries whilst in detention” (at [21]).
 - (10) However, the judge found that like many thousands of grassroots supporters as the country materials demonstrate, the appellant was released without any conditions attached or any requirements to report.
 - (11) The judge found that he was therefore of no further interest the authorities and was not considered any form of threat and would have been regarded like many thousands of others is merely a low-level supporter.
 - (12) The judge rejected his account that he was motivated to leave Ethiopia because of the present fear of his safety or realistically any future fear for his safety. The judge found that there was no good reason why a genuine refugee would not have claimed asylum in the first European country came to nor did he find any good reason why, if the Home Office is correct, having claimed asylum in Germany would then leave.
43. The FtTJ then turned to the issue of risk on return in the light of the country guidance decision of MB [2007], the substantial body of current country material including the report of Dr Verhoeven and the evidence of the appellant’s witness. Dealing first with the country guidance case of MB, the FtTJ referred to the summary that OLF members and sympathisers and those specifically perceived by the authorities to be members or sympathisers will generally be at risk of persecution if they have previously been arrested or detained on suspicion of OLF involvement. The judge concluded that at first

glance the appellant would appear to fall within that category as someone who had been for a short time in OLF supporter and also had been arrested and detained. However, at [23] the FtTJ stated:

“23. That country guidance case is now some 13 years old and whilst it has not been superseded by any other country guidance case, a care needs to be taken. It is good and understood law that they need to be good reason to depart the country guidance case. It is also good sense that following a country guidance case which has been substantially overtaken by events is not in the interests of justice.”

44. At paragraphs [25-38] the FtTJ set out his analysis and reasoning as to why the appellant would not be at risk on return to Ethiopia and why he departed from the CG decision of MB on the material that was before him, including the expert evidence adduced by the appellant.
45. At [27] the judge made reference to the fact-finding mission report, dated February 2020 which he stated he found of “greater use”. Among speeches noted about the OLF, one source said that they had 6 million supporters on their return from exile to Addis Ababa (7.3.1). They had a large social base of support. It was further noted however that OLF was now fragmented and was composed of different factions numbering about 4 to 7.
46. At [28] the judge took into account that in terms of security at paragraph 8 there had been a rapid dismantling and purging of the security sector but without new systems being put in place: “there is a new system a machine but there are a lot of errors within this as forces act how they want. The old systems are been removed with a new one has not been put in place. It means security/please do not have a mandate on how they can act.” The judge recorded that the TPL effort been removed from the security apparatus especially the military and intelligence service. DFID noted “in terms of the institution we have seen that a commitment from government e.g., the appointment of human rights institutions. We are disappointed in the security protection decrease.” There are indications of those responsible for torture or corruption being charged but it was spasmodic. E -Zema noted “of course it shows commitment to security and justice for, but we cannot go forward as a country by arresting and charging everyone from the previous government.” There is a feeling that Tigrayans are being targeted.
47. At [29] the judge stated that “regions are of importance and there are regional security forces varying hugely in size. Central government did not have effective control over regional security forces or regional states.”
48. At [30] the judge took into account the country materials relating to arrests in Ethiopia. He noted “the government did not arrest people arbitrarily as it used to. Arbitrary arrest in mass numbers is witnessed although rare. The main concern was arbitrary arrests within regions. Different groups fight for their own status e.g., Amhara and Oromo (9.1.2). Arrests vary according to region. It

was noted that there had been some arrests of the ONLF, but the numbers were small. Situation was better and although not a hundred percent safer ONS not comparable to the actions of the previous government.

49. At paragraph [31] the judge set out the country materials relevant to arrest and detention and training camps and the purpose behind such attentions and treatment. This stated “one reason provided in September 2019 was for the government to weaken opposition by detaining political opposition, Harris and then release them. The people being arrested tended to be younger and not involved in the previous regimes, arrests, and detention. DFID Ethiopian cautioned against the assessment of state targeting of OLF and Oromo. It was unlikely a person will be picked up by security forces in an Oromo area or Addis Ababa based on being linked to OLF. Reference is made to the legalising of OLF, but it is hard to distinguish who is and what the OLF is. The ODF ruling Oromo party is seen as the oppressor by some OLF supporters. There is also an opinion from Addis Ababa University, September 2019 reported at 9.6.629.6.7. At 9.8.1 OFC Horn of Africa researcher and DFI D Ethiopian staff on the issue of arrests of Oromo/OLF said:
- “the senior representative of the OFC opined that Oromo were arrested on the basis of ethnicity and that if someone was against the government, they would be linked to OLF. However, the throne of Horn of Africa researcher noted that prior to Abiy this could be the case and that it was rare for an Oromo who was arrested not to be accused of being OLF that did not make representations about the present situation. DFID Ethiopian staff observed 10 years ago then yes, objectively I would say that this is not the case now but there are some cases. Depends on your geography, history, background. I would caution against the assessment that if you are OLF and Oromo you are being targeted.”
50. At [34] the judge considered the evidence of the appellant’s witness who he stated he found to be of assistance and credible. That evidence referred to family members held in detention and knowledge of a friend who had voluntarily returned from Norway being arrested. The witness described himself as a full member of the OLF since 2014 and OLF UK and Ireland executive committee member. The judge considered that the witness “had a different profile to the appellant. Nevertheless, the prospect the family members were detained is not inconsistent with the complex issues described within the function material.”
51. At [36], the judge considered that the position in Ethiopia had “changed to the extent that I find the case to be outdated. The features that seem reasonably clear from the material now is that:
- (a) the previous government has gone on much of those responsible for persecution or discrimination and arbitrary ill-treatment have also gone from power.

- (b) There were genuine efforts of reform, respect for human rights and the rule of law established by the new government but progress has been arbitrary and slow.
- (c) A power vacuum has been created by the removal of many of the previous regime
- (d) there are now far more regional and ethnic factions of potential for their own security groups and infighting.
- (e) There has been a large number of IDP is caused by both drought and internal violence.
- (f) It would perhaps be unwise for a person say of Oromo ethnicity to move to an area of largely different ethnic group given the regional conflicts.
- (g) There is a profile within the OLF or regarded as a competent or clearly in opposition to the government, potentially do run something of a risk of being targeted."

52. Having made that summary of the material the FtTJ returned to the position of the appellant. The judge stated as follows:

"37. The appellant I find at his highest was a mere support of the OLF for a brief period in Ethiopia, 2013 to 2015. I accept he may have been arrested and detained along with thousands of others by the former regime that was released and was I find of no further interest of that regime. I find it highly unlikely any record of his activities or arrest would have been kept and that small risk was clearly diminished even further by the end of that regime.

38. The appellant's profile remains in my view very low and impart his activities in the UK are simply self-serving."

53. The FtTJ therefore concluded that given his assessment of the evidence and credibility he did not find that the return of the appellant to Ethiopia would present a real risk that he would be at risk of persecution or serious harm on return. Consequently, he dismissed his appeal.

54. Permission to appeal was sought and permission was refused by FtT Judge Grant but on renewal was granted by UTJ Grubb on 2 December 2020 for the following reasons:

"grounds one, three and four are arguable that the judge failed properly to consider the expert report in reaching his finding that the appellant was not at real risk on return and in departing from MB. I also grant permission on ground to although the materiality of any error will need to be established.

Ground six (there is no ground five) is not arguable. The judge accepted the appellant's account (see para 21) so the application of section 8 of the 2004 act was not material to the finding that the appellant was not a real risk.

For these reasons, I grant permission on grounds one - four but refuse permission on ground 6."

The hearing before the Upper Tribunal:

55. In the light of the COVID-19 pandemic the Upper Tribunal issued directions indicating that it was provisionally of the view that the error of law issue could be determined without a face-to-face hearing and that this could take place via a remote hearing. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.
56. I am grateful for their assistance and their clear oral submissions.
57. Mr Magennis of Counsel appeared on behalf of the appellant and relied upon the written grounds of appeal. He took the Tribunal through the grounds and did so by reference to the country materials.
58. In summary, it was submitted that based on the evidence provided on behalf of the appellant and also in the respondent's evidence that the appellant was in an enhanced risk category taking into account his area of origin, his family history and thus the FtTJ's assessment of him as a "low-level supporter" of the OLF did not adequately take account of those factors.
59. It was further submitted that the FtTJ gave inadequate reasons for rejecting the expert evidence advanced on behalf of the appellant. A careful consideration of the evidence set out in the respondents CPIN and the Fact-Finding Mission report (hereinafter referred to as the "FFM") demonstrated that the evidence contained in those reports did not contradict the expert evidence of the appellant.
60. Those submissions were contained in grounds 1 and 3. When looking at the appellant's profile, it was submitted that the judge mischaracterised the appellant's profile as a "low-level" member of the OLF despite the expert evidence which made reference to his home area of Wollega in the Oromia region of Ethiopia. The expert report made reference to the relevance of the appellant's home area (page 10 of the expert report; A38) and the evidence was not in conflict with the evidence contained in the CPIN and the FFM where reference was made to the ongoing conflict between the militant wing of the OLF (known as the OLA) and the government forces and civilians had been targeted by the government in retaliation.
61. A further relevant factor related to the appellant's history and background. Mr Magennis submitted that this formed part of the appellant's evidence which had not been challenged at the hearing. The respondent had not been represented at the hearing and the FtTJ did not ask any questions of the appellant who relied upon and adopted his witness statement as his evidence. In his witness statement the appellant set out his account that his family had suffered in Ethiopia as a result of their ethnicity as Oromo. The appellant's grandfather was killed by the Ethiopian government in 1992, the OLF was expelled from the government in that year and prominent supporters were

hunted by the security forces. It is said that he was arrested and then killed whilst in detention. In relation to his father, he supported the OLF financially and was an Oromo nationalist. It was further stated by him at paragraph 11 of the witness statement that his parents were arrested at home in 2010, were detained and taken to the police station and were held for three months before being released without charge.

62. As to his own history, it was not disputed that the appellant was a supporter of the OLF and had undertaken activities on their behalf. It was further not disputed that he was detained from 30 August 2014 until 30 November 2014. It was submitted that whilst the FtTJ placed reliance on the fact that the appellant was released without charge, the appellant's account to set out in his witness statement was that he left Ethiopia in December 2015 as a result of the increasing oppression of the Oromo people and the targeting of young men by the security forces. Furthermore, he stated that towards the end of the period when one of his cell members was arrested and his family were arrested it was clear that he would be at risk (see paragraphs 45 - 46 at A9). Therefore, the appellant's profile was not properly taken account of when making an assessment of risk within the country materials.
63. When addressing the expert evidence (ground three) it was submitted that the judge did not dispute the expertise of the expert nor did he appear to challenge the quality of the report however the FtTJ did not go on to take account of the expert evidence relating to the risk to this particular appellant in Ethiopia. At best, it is submitted the judge appeared to address this at paragraph [27] where the judge made reference to the FFM dated February 2020. From that paragraph it appears that the FtTJ preferred the evidence in the FFM given the comments that it was not "focus on the credibility or plausibility of the appellant's account but is solely concerned with the current situation".
64. However, it was submitted that the expert evidence covered both the plausibility of the appellant's account and the country situation in Ethiopia with both aspects considered.
65. Thus, it was submitted that the judge could only reject the expert evidence based on the respondent's evidence if one contradicted the other. However, it was submitted that the evidence did not and that both the FFM and the expert evidence portrayed the same complex developing confrontations between the government and opponents of the government. In this context as set out in ground one, issues relating to the appellant's place of origin, family background and his arrest history was consistent with the evidence set out in the respondent's CPIN and the FFM.
66. In his oral submissions Mr Magennis referred the Tribunal to the country materials before the FtTJ and highlighted two issues; firstly, there was no clear definition of OLF membership (relying on evidence in the FFM report at paragraph 4.3 .2, 4.3.3, 7.4.3, 9.1.4 and 9.5.6 (CPIN). Secondly the FFM and the

CPIN did not offer a clear and unified idea of the extent of arrests of OLF members and supporters. Whilst the judge referred to the FFM interview with the Department for International development evidence there was a low risk of arrest or persecution but that this interview at page 76 of the FFM was probably most optimistic picture of the evidence. Paragraph 21 of the grounds set out the country material in the FFM and CPIN which gave a contrary picture.

67. In summary, the sources consulted by the respondent gave different perspectives on the government's treatment of the OLF but the themes from the evidence relied upon by the appellant and the respondent all referred to a conflict in Oromia between the armed wing of the OLF and the government and some targeting of civilians in that area, slowing government reform and the failure of attempts to integrate the OLF into the Ethiopian army, an escalation of community violence and the resumption of some political arrests.
68. Mr Magennis referred to ground 3 and the issue of departing from country guidance. He submitted that when taking into account the current CG set out in the headnote, if the judge had not departed from the CG, the appellant fell within the criteria.
69. However, the FtTJ did not apply the correct test set out in SG (Iraq). In this context he submitted that grounds one and three overlapped and that it was necessary to consider what the evidence was to disagree with the expert (ground one) and what evidence there was to depart from the current CG decision. In this context he submitted, the judge failed to identify the correct test and secondly even if he did, the test to depart from country guidance was a high test and was not met. There was not the cogent evidence before the tribunal to justify a different conclusion from that in MB and that Ethiopia showed a complex picture of arrests and violence had continued. He submitted that whilst the judge did not dispute the expert evidence, he ignored the assessment within that report concerning the issues of risk and had he properly applied the expert report to the evidence in the FFM, he would not have reached the conclusion that the country guidance decision could have been departed from. In any event, the evidence in the FFM and the CPIN did not offer a clear idea of the extent of arrests.
70. Dealing with ground 4, he submitted that the judge applied to higher threshold for a "real risk" of persecution and made contrary findings to the appellant's background evidence without reason. In particular Mr Magennis relied upon the reference by the FtTJ at [38] that his profile remained "very low" and that his activities in the UK were "simply self-serving". The judge gave no reason as to why he believed that to be the case and it was unclear on the evidence how his activities were "in part" self-serving and what it meant. The judge had not sought to clarify this during the hearing.
71. It was further submitted that the FtTJ's conclusion at [37] that the appellant was a mere supporter of the OLF was contradicted by the evidence and that it was

not the case that the appellant did not face persecution after his detention as the appellant's account was that his house was ransacked, and he went into hiding before he fled the country.

72. As to ground 2, it was submitted that the expert evidence set out that the risk of persecution to the appellant came not just from the state but also from nonstate actors as a result of the current security vacuum in Ethiopia. As with the other grounds, it was further submitted that the evidence set out in the expert report was supported by the evidence in the respondent's country information. For example, in the most recent CPIN (which in turn relied on the evidence set out in the FFM) set out that the president's intended reforms were threatened by "ethnic conflict in breakdowns in law and order" (3.8.8) and that local grievances were being played out at regional levels" (see 3.8.2). Sources in the CPIN note that violent demonstrations can largely be attributed to "group clashes and communal violence". It is also detailed that despite the efforts of the central government to reduce killings and arrests, local government forces are failing to follow the government leads. Thus, it was submitted the failure to consider the risk from nonstate actors was also an error of law given that the issue was specifically set out in the expert evidence.
73. There was no rule 24 response on behalf the respondent. However, in her oral submissions Ms Pettersen accepted that the appellant's grounds were made out. It was accepted that the judge had not properly identified the appellant's profile and that if the judge had applied the CPIN based on the factual findings that he had made in respect of his history, then the appellant would have succeeded as the evidence demonstrated a real risk of serious harm or persecution on return.
74. It was accepted on behalf of the respondent that the error of law was material and that even on the basis of the facts found, the outcome would have been different, and that the appellant would have succeeded in his appeal.
75. Ms Pettersen therefore invited the court to set aside the decision of the FtTJ and to remake the appeal by allowing the appellant's asylum appeal.

Decision on error of law:

76. After hearing the submissions made on behalf of the appellant and the particular reference made to the country materials, as set out above Ms Pettersen on behalf of the respondent accepted that the judge had materially erred in law for the reasons set out in the grounds. In the light of that acceptance, I conclude that the FtTJ materially erred in law for the reasons set out in the grounds that relate to the assessment of the country materials, and the expert evidence which led to an error in his assessment of both the appellant's profile and the risk to the appellant. Those errors also infected the conclusion concerning the finding made by the FtTJ that the country evidence was sufficiently strong and of a durable nature to satisfy the test to depart from the current country guidance of MB.

77. Therefore, and in the light of the submissions made on behalf of the respondent it is accepted that the decision of the FtTJ involved the making of an error on a point of law. I therefore intend to set out briefly the reasons why I agree with that view.
78. The current country guidance is set out in MB (OLF and MTA - risk) Ethiopia CG [2007] UKAIT 00030. The relevant part of the headnote reads as follows:

(1) *As at February 2007, the situation in Ethiopia is such that, in general:*

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- (a) *Oromo Liberation Front members and sympathisers.*
- (b) *persons perceived to be OLF members or sympathisers; and*
- (c) *members of the Maccaa Tulema Association.*

will, on return, be at real risk if they fall within the scope of paragraph (2) or (3) below.

(2) *OLF members and sympathisers and those specifically perceived by the authorities to be such members or sympathisers will in general be at real risk if they have been previously arrested or detained on suspicion of OLF involvement. So too will those who have a significant history, known to the authorities, of OLF membership or sympathy. Whether any such persons are to be excluded from recognition as refugees or from the grant of humanitarian protection by reason of armed activities may need to be addressed in particular cases.*

Since that decision and after years of widespread protests against government policies, and brutal security force repression, the human rights landscape transformed in 2018 after Abiy Ahmed became prime minister in April. The government lifted the state of emergency in June and released thousands of political prisoners from detention, including journalists and key opposition leaders such as Eskinder Nega and Merera Gudina. The government lifted restrictions on access to the internet, admitted that security forces relied on torture, committed to legal reforms of repressive laws, and introduced numerous other reforms, paving the way for improved respect for human rights. Parliament lifted the ban on three opposition groups, Ginbot 7, Oromo Liberation Front (OLF) and Ogaden National Liberation Front (ONLF) in June. The government had used the proscription as a pretext for brutal crackdowns on opposition members, activists, and journalists suspected of affiliation with the groups. Many members of these and other groups are now returning to Ethiopia from exile.

79. As set out above the respondent and the decision letter made reference to the changes that had occurred in Ethiopia to support the position that the CG (see page 12 of the decision letter).

80. The appellant relied upon an expert report from Dr Verhoeven set out in the bundle at A29 – A53 dated 7 July 2020 which made reference to the continuing risk factors facing the appellant based on his particular backgrounds and circumstances and his support and membership of the OLF. The expert set out in his report why the relevant evidence that notwithstanding the positive changes, there remained a risk of serious harm to the appellant and by reference to the country materials. At paragraph 1 of that report Dr Verhoeven set out his qualifications and experience referable to Ethiopia including having made 10 research trips there in the last five years. In his decision the FtTJ does not appear to dispute that expertise nor is there any overt challenge to the material in that report and the conclusions reached.
81. I would agree that the only point that can be viewed as a criticism of the report is that set out at [27] where the judge made reference to the Fact-Finding Mission report, dated February 2020 which he stated he found of “greater use”. The judge stated that this was a comprehensive report running to many pages and obtained evidence from multiple sources, many in senior positions in from a wide range of individuals. He noted that it was “not focus on the credibility or plausibility of the appellant’s account that is solely concerned with the country situation. The inference raised from that observation is that Dr Verhoeven’s report merited less weight because it was focused on the plausibility of the appellant’s account. In my judgement, it would not be unusual for an expert report to deal both with plausibility of an appellant’s account but also with the country situation under consideration. That is the purpose of the report- to set the appellant’s account alongside what is known about country conditions in the country under discussion. Thus, it would be wrong to say that the expert report should be given less weight solely on the account of it focusing on the plausibility of the appellant’s account.
82. Furthermore, as accepted on behalf of the respondent, the expert evidence set out in the report of Dr Verhoeven did not materially differ from the material set out in the respondent’s evidence. Whilst the FFM was a comprehensive report and was properly described as one emanating from multiple sources from those in senior positions of a wide range of individuals, that report identified a complex country situation where confrontation between the government and opponents of the government still continued.
83. The grounds expressly make reference to the country materials set out in the FFM and the CPIN which did not provide a clear and unified picture concerning the extent of arrests of OLF members and supporters. This was of material relevance given the FtTJ’s assessment at [30] there have been some arrests of the OLF at a local level, but the numbers were small and at [31] where he recorded that the DFI D Ethiopia cautioned against the assessment of state targeting of OLF and Oromo and that “it was unlikely a person will be picked up by security forces in an Oromo area or Addis Ababa based on being linked to the OLF.” The FtTJ also quoted paragraph 9.8.1 from OFC Horn of Africa research at the DFI D Ethiopia staff on the issue of arrests of Oromo/OLF, and

that in summary there would be a low risk of arrest. However, a journalist was interviewed by the FFM explained “we are hearing reports filtering through of thousands of journalists, activists and protesters being arrested in Oromia. now you go to a Oromia region and you get hundreds, or thousands arrested, adding “in Oromia region, they do this mass arrests” (I refer to 15.0.10) and also see earlier at 5.1.7 where reference was made to the OLF allowed to return to Ethiopian but that the government still labelled their “fighting in the bush” as illegal and therefore continue to arrest the so-called insurgents for their acts of banditry. By legalising the OLF, it allowed Oromo activists and oppositions to openly self-identify as the OLF”.

84. Reference is made to the Amnesty International report (in CPIN at 15.1.13) where reference was made to the OLA’s decision in April (2019) to cut ties with the OLF. It records “OLF supporters on the campaign trail have been arrested, beaten and threatened by state security forces over the past few months. Amnesty International reported at least 75 OLF supporters had been arrested last month (January 2020) with most of them rounded up while peacefully attending various OLF campaign functions.”
85. The OLF are a registered party that plans to compete in upcoming national and regional elections. However, the Amnesty international information set out that notwithstanding that, complaints were made about continuing state repression and being unable to engage and take part in activity in areas under command post rule. The executive committee member stated that since July last year, “more than 10,000 members were arrested and for example 42 of those detained in “dark rooms” in the Kumsa Moroda Palace Museum, with over 600 imprisoned in Gimbi at military camps. Over hundred and 40 OLF officials, members and supporters were held in Kaliti and Kilinto prisons and Addis Abbaba’s “Sostegna” police station. Around 350 OLF members were arrested this week, mostly in Oromia towns near Addis Ababa.”
86. There is no dispute as to the applicable test when consideration is given to departing from a country guidance decision. In SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940 Lord Justice Stanley Burnton said this:

45. There are simply not the resources for a detailed and reliable determination of conditions in foreign countries to be made on an individual basis on each decision on the application or appeal of persons seeking protection. There are far too many such cases, as is demonstrated by the Secretary of State's use of charter flights to accommodate the large numbers of returnees to countries such as Afghanistan and Iraq. Neither those representing those seeking protections nor the Secretary of State herself have the resources for the detailed, lengthy, and costly investigation of conditions on return that is appropriate, given the potential risk to the returnees, in every case. Even if the resources were available, it would be wasteful to have such an investigation, involving much the same evidence, in every case. There would also be a risk of inconsistent decisions, a consideration that is particularly important in the present context since it

follows from a decision that one person requires protection, if correct, that a person in the same situation who has been returned may have risked or suffered ill treatment or worse.

46. The system of Country Guidance determinations enables appropriate resources, in terms of the representations of the parties to the Country Guidance appeal, expert and factual evidence and the personnel and time of the Tribunal, to be applied to the determination of conditions in, and therefore the risks of return for persons such as the appellants in the Country Guidance appeal to, the country in question. The procedure is aimed at arriving at a reliable (in the sense of accurate) determination.

47. It is for these reasons, as well as the desirability of consistency, that decision makers and tribunal judges are required to take Country Guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced justifying they're not doing so.

87. The Upper Tribunal elaborated upon this test in the subsequent decision in CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 59 (IAC) [at Â§72]:

“[We] recognise that where a previous assessment has resulted in the conclusion that the population generally or certain sections of it may be at risk, any assessment that the material circumstances have changed would need to demonstrate that such changes are well established evidentially and durable.”

88. As the grounds set out and as the advocates agree, the country materials relied upon by both the appellant and the respondent set out a number of agreed themes. Notwithstanding the changes that had occurred since 2019, the evidence continues to point to a conflict in Oromia between the armed wing of the OLF and the government and some targeting of civilians in that area, a slowing of government reform and that the security and intelligence personnel of the previous government remained largely in their posts. There are failures of attempts to integrate the OLF into the Ethiopian army and an escalation of community violence with the resumption of some political arrests. Consequently, the situation in Ethiopia could not properly be said to have been settled and the position remained fluid. Therefore, on the evidence of both parties and particularly in the evidence set out in the expert report (which the judge did not reject with any cogent reasons), the circumstances and changes in Ethiopia could not be described as being well established evidentially and durable.
89. Furthermore, it is agreed by the parties that the FtIJ did not consider the totality of the evidence when reaching a conclusion as to his profile. The FtIJ considered that the appellant was a “low level” OLF member and supporter, as set out in the decision at [37]. Whilst the judge accepted that had been arrested and detained along with thousands of others, the judge considered that as he was released, he would be of no further interest to the regime. At [38] the judge

considered that his profile remained “very low” and that his activities in the diaspora were “self-serving” and would not bring him to any adverse attention.

90. However, as identified in the expert report, there were other risk factors relevant to this particular appellant in terms of his area of origin and family history. There is no dispute that the appellant is from Wollega in the Oromia region, which was described in the expert evidence as “known for decades for its radical national support base and, as such, has served as a key recruitment ground (and stronghold) of the OLF.” The expert also identified that the area was “openly flying OLF flags as liberated zones”.
91. This was also supported by the evidence relied upon by the respondent (see the CPIN and the FFM report) which made reference to the ongoing conflict between the militant wing of the OLF (the OLA) and the government forces and civilians had been targeted by the government in retaliation (at 14.3.17 and 14.3.11. The material set out that conflict in the area of Guji and Wollega was ongoing (14.2.13 and that a military command post been established by the government throughout Western Oromia and that more than a thousand people have been arrested for links to the OLF.
92. In terms of family history, it had not been disputed that his grandfather had been killed by the government as a result of his political opinion and that both of his parents had been arrested and detained for three months.
93. Whilst the FtTJ did consider the country materials in the FFM report and in particular the DFID at [31] when considering the risk to members of the OLF to arrest and those of Oromo ethnicity, the same material set out that it would “depend on your geography, history and background.” Therefore, the respondent’s evidence did not undermine or contradict the evidence relied upon by the appellant that he fell into a category of enhanced risk factors which included his area of origin and his family history (see expert evidence set out at A39). The appellant’s evidence noted that his family history would be considered a “black mark” against him.
94. Whilst the FtTJ considered that the appellant had undertaken some sur place activities for the OLF in the UK but that this was “self-serving”, no further analysis was undertaken other than a general note that it would not bring him to the attention of the regime. However, the expert report did set out at A45 that there was a real risk of harm of reprisals as a result of the security forces tight monitoring of cyberspace.
95. The last issue relates to the appellant’s background. At paragraphs [16 – 20] the FtTJ considered the medical report and psychiatric report provided on behalf of the appellant and set out his reasoning as to the deficiencies in that evidence. However, based on the medical report that referred to the scars on the appellant, the judge found that he “may well have been arrested and detained

as a result. I accept the possibility that he suffered ill-treatment and injuries whilst in detention” (at [21]).

96. It is important to have regard to the circumstances of the individual where that person has already been subject to persecution or serious harm and therefore falls into the category of persons to whom to Rule 339K of the Immigration Rules applies mirroring Article 4 of the Qualification Directive. That Rule is in the following terms:
- “The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution and such harm, will be regarded as a serious indication of the person’s well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated”.
97. The FtIJ took the view that as the appellant had been released from detention he would not be at risk. However, that conclusion did not take into account the other aspects that provided him with an enhanced risk profile as set out above, and as the appellant had stated in his evidence after he left Ethiopia members of his cell had been arrested.
98. In conclusion, there have been changes since the CG decision of MB and that the president has taken positive steps towards resolving the Oromo issues, but the general thrust of the country materials demonstrate that it is too early to conclude that the changes that have been taken and measures that have been introduced will have any effect upon members and supporters of the OLF and the risk of serious harm that they may face. Whilst the OLF are no longer a banned organisation and the material refers to their leaders returning from exile, it remains the position that the government have continued to use arbitrary arrest and detention to stem dissent and as the expert evidence demonstrates, the abuses occur against the background of continuing ethnic tension and instability. The evidence relied upon by both parties continue to make reference to human rights abuses that have continued despite the legalisation of certain organisations and as both parties accept, in the light of that material it is not been demonstrated that the evidence relied upon by the respondent was of a sufficient cogency or of a durable nature to depart from the country guidance decision of MB notwithstanding the length of time since promulgation of that decision.
99. In the case of the appellant, he falls within the risk categories identified in the decision of MB, as he is a member and supporter of the OLF who has been arrested and detained as a result of that membership. Furthermore, in his particular case it is accepted that there are enhanced risk factors which apply which distinguish him from a “low level member” and which point to a greater risk profile which concern the area he originates from, his family history of OLF support and dissent and that the support provided by way of his activities in

the UK. On his evidence, members of his cell had been arrested after he had left Ethiopia.

100. It is therefore agreed between the parties that the decision of the FtTJ involved the making of an error on a point of law for the reasons set out in the grounds and that based on the factual findings made by the judge in addition to the enhanced risk factors which were not taken into account and set out above that the error was material. Had that risk profile been taken account of in light of the expert report and the CPIN and FFM, the appellant would have succeeded in his appeal.
101. For those reasons, I am satisfied that it has been demonstrated that the decision of the FtTJ did involve the making of an error on a point of law and that the decision shall be set aside. The decision is re-made as follows: the appeal is allowed on asylum and human rights grounds (Article 3).

Notice of Decision:

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.

The appeal is remade as follows: the appeal is allowed on asylum and human rights grounds (Article 3)

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. 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 Upper Tribunal Judge Reeds

Dated 14 May 2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The

appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days if the notice of decision is sent electronically).
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).
4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days if the notice of decision is sent electronically).
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.