Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/00450/2020**

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre (remote)	**Decision & Reasons Promulgated**
On: 8th February 2022	**On 09th March 2022**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

NA
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Azmi, French & Company Solicitors
For the Respondent: Ms Young, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Ethiopia born in 1998. He seeks protection on the grounds that he faces persecution in Ethiopia for reasons of his political opinion.

2. The Respondent refused the Appellant's asylum claim on the 29th June 2020. It was accepted that the Appellant is an Ethiopian of Oromo ethnicity, and that the Oromo form a 'particular social group' in Ethiopia. The Secretary of State did not however accept that the

Appellant had been politically active as he claimed, or that he had ever been arrested for his support for the OLF.

3. The Appellant appealed and the matter came before First-tier Tribunal Judge Elliot on the 20th January 2021. Judge Elliot heard oral evidence from the Appellant via video link. Having done so, and having considered that testimony in the round against the country background material and the written evidence, he found:

    - That in 2013 the Appellant took part in a poetry competition at school. Aggrieved by the arrest of his father and the confiscation of family land the Appellant had read a poem critical of the Ethiopian government. The Headmaster called the police and the Appellant was arrested and detained for a month. He was released after his mother raised the money to bribe an officer to release him. He was made to sign an undertaking not to take part in any further 'political activity' and was suspended from school for one year

    - In 2014 the Appellant took part in Oromo protests against the government's 'master plan' to seize more Oromo land. He was a low level recruiter of other protestors and was, along with others, beaten by the armed forces during the demonstration

    - That the Appellant has shared at least 13 posts on Facebook showing the killing or beating of Oromo people

4. I would add that implicit in the first finding I summarise above is an acceptance that the Appellant's father was arrested and detained for some five years because of OLF activity. This much was accepted. The Tribunal however rejected as embellishment the Appellant's claim that his family have continued to face harassment and that an arrest warrant had been issued in his name. It was not satisfied that the Appellant's limited Facebook activity would have come to the authorities' attention. The Tribunal's conclusion is expressed at its paragraph 64:

> "I note from the objective evidence that the reforms started by the government of Abiy Ahmed are said to have stalled and that there are recent instances of arbitrary arrests of OLF leaders, members and supporters. That may be so, but in the absence of credible evidence that the Appellant is of continuing interest to the government, **I find that he is an Oromo who participated at a low level in events back in 2013-14 and that in itself is, according to the UK government information, unlikely to result in his being of any interest to the authorities**. I therefore find that the Appellant has failed to demonstrate, even to the low

> level required in a protection claim that his subjective fear of persecution or serious harm is objectively well founded"

(Emphasis added)

5. The appeal was accordingly dismissed.

6. The Appellant applied for permission to appeal and on the 5th March 2021 permission was granted by Judge Adio.

7. The central question raised in this appeal is whether the Judge materially erred in his assessment that the Appellant's profile was not sufficiently high as to expose him to a real risk of persecution upon return to Ethiopia. Before me the parties agree that this question needs to be answered with reference to the new country guidance: AAR (OLF - MB confirmed) Ethiopia CG [2022] UKUT 1 (IAC). In particular that guidance now illuminates the extent to which 'low level' activity such as that found by the First-tier Tribunal in this matter would in fact place a returnee at risk of serious harm in Ethiopia today.

Discussion and Findings

8. Before me the Secretary of State, represented by Ms Young, very realistically concedes that there is an error in approach by the First-tier Tribunal. The extant country guidance at the date of the hearing before it was MB (OLF and MTA - risk) Ethiopia CG [2007] UKAIT 00030. The panel in MB held *inter alia* that there was a general risk of persecution to OLF members and sympathisers in Ethiopia where such individuals had previously been subject to arrest. On the First-tier Tribunal's own findings the Appellant fell into that category. The Tribunal gives no reason why it decided to depart from that guidance, and in so doing therefore fell into error. I agree that this error is made out and the decision of the First-tier Tribunal is therefore set aside.

9. The parties invited me to remake the decision on the basis of the facts found by the First-tier Tribunal, applying the new country guidance. The headnote of AAR (Ethiopia) reads:

> **Country guidance: OLF members and sympathisers (supporters)**
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> (1) *MB (OLF and MTA - risk) Ethiopia CG [2007] UKAIT 00030 still accurately reflects the situation facing members and supporters of the OLF if returned to Ethiopia. However, in material respects, it is appropriate to clarify the existing guidance.*

(2) *OLF members and supporters and those specifically perceived by the authorities to be such members or supporters will in general be at real risk if they have been previously arrested or detained on suspicion of OLF involvement.*

(3) *Those who have a significant history, known to the authorities, of OLF membership or support, or are perceived by the authorities to have such significant history will in general be at real risk of persecution by the authorities.*

(4) '*Significant*' *should not be read as denoting a very high level of involvement or support. Rather, it relates to suspicion being established that a person is perceived by the authorities as possessing an anti-government agenda. This is a fact sensitive assessment.*

(5) *Whether 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.*

10. This guidance provides that there are two broad categories of Oromo individuals who will in general face a real risk of persecution in Ethiopia. The first are OLF members or supporters who have previously been arrested on suspicion of such political sympathies. In the second category are those who otherwise have a significant history of OLF membership or support that is known to the authorities. As to what 'significant' might mean in this context the panel in AAR make the following observations:

> 100. Before concluding, it is appropriate that we address one issue that did arise before us: what is the meaning to be ascribed to the term 'significant history' which appears in the country guidance?
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> 101. The requirement that a claimant prove a significant history of membership or support for the OLF can be traced to the 2005 decision in HA (OLF Members and sympathisers - risk) Ethiopia where it appears, for the first time, in the penultimate paragraph. No elaboration is given as to the meaning of 'significant history', but we note that the Tribunal accepted the evidence set out in a Country Information and Policy Unit (CIPU) report of April 2004 as to the arbitrary detention and ill-treatment of 'thousands of OLF members and sympathisers'. In 2007, the evidential finding in HA was converted into formal guidance by the Tribunal in MB (OLF and MTA - risk). Again, the term is not defined. In that case the Tribunal accepted, without qualification, the evidence of country expert Dr Roy Love. It was his evidence that the *modus operandi* of the Ethiopian security forces was to arrest large numbers of civilians, accusing them of OLF involvement, only to release, then re-arrest in a cycle of harassment and ill-treatment. Others were kept in arbitrary

> detention for prolonged periods, often without hearing or cause shown, sometimes incommunicado. The Tribunal also considered a range of evidence identifying the use of torture by the authorities. We note that this accords with Prime Minister Abiy's subsequent admission to Parliament that the EPRDF engaged, for many years, in the systemic use of torture against perceived opponents. This was the context in which the previous Tribunal, whose guidance we are invited to uphold, employed the term.
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> 102. We do not find the evidence before us to be materially different today. As the evidence outlined in the CPINs illustrate, many thousands continue to be arrested in sweeps, such as that which occurred in the aftermath of the murder of Hachalu Hundessa. These civilians are then subject to the same cycle of arrest/release/re-arrest as that identified by Dr Love over 15 years ago. Whilst it cannot be said that *any* level of support for the OLF will give rise to a well-founded fear of persecution, it cannot be said that 'significant' must denote a high-level or prominent connection to the party. We note Mr. Southerden's evidence on behalf of Amnesty International, consistent with other evidence placed before us, that "both formal arrest warrants and institutional as well as personal memory of individual officers plays a major role in determining who is perceived as possessing an anti-government agenda and therefore subject to suspicion." This local, and informal, approach is the context in which we must place the numbers of those arrested. We therefore conclude that 'significant' should not be read as necessarily denoting a very high level of involvement or support. Rather, it relates to suspicion being established that a person is perceived by the authorities as possessing an anti-government agenda. This is a fact sensitive assessment.

11. On the findings made by the First-tier Tribunal the Appellant clearly falls into category one: he was arrested and detained for approximately one month on suspicion of sympathy for Oromo separatism. I am further satisfied that on the findings made he would also fall into category two: he would be returning to Ethiopia as an ethnic Oromo with a personal, and family, record of support for the OLF. His father served a five year sentence for these political sympathies, and the Appellant himself was sent to prison as a teenager and suspended from school. It is reasonably likely that these matters would lead the Ethiopian authorities to conclude that the Appellant possesses an anti-government, pro-Oromo separatist, agenda. Applying the current guidance, he would therefore be at risk. Ms Young did not seek to persuade me that the passage of time has lessened that risk. In my view she was right not to do so. There is nothing in the findings in AAR which could support such a proposition. The Appellant is therefore entitled to refugee status and I replace the decision of the First-tier Tribunal with one allowing the appeal on protection grounds.

Decisions

12. The decision of the First-tier Tribunal is set aside by consent.

13. The appeal is allowed on protection and human rights grounds.

14. Having had regard to the new Presidential guidance on anonymity orders *Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private* I have decided to make an anonymity order. Although I indicated during the hearing that the importance of open justice would *prima facie* override any private life rights asserted by the Appellant (in the absence of any particular reason why an order should be imposed), it has since come to my attention that the Appellant asserts that he has been a victim of trafficking. As such I am bound to make an order. At paragraph 19 (b) that guidance provides:

> b. Allegations of trafficking: under section 2(1) (db) of the Sexual Offences (Amendment) Act 1992, a person who has made an allegation that he or she has been trafficked contrary to section 2 of the Modern Slavery Act 2015 is entitled to the same life-long anonymity as an alleged victim of a sexual offence. It should be noted that offences under section 2 of the 2015 Act have a wide extra-territorial reach as do investigations carried out by the competent authority. This provision may require anonymising a judicial review application.

15. Accordingly I make an order for anonymity under Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* in the following terms:

> "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, any of his witnesses or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Upper Tribunal Judge Bruce
8th February 2022