



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04854/2019**

THE IMMIGRATION ACTS

**Heard at: Manchester Civil Justice Centre
(remote)
On: 8th February 2022**

**Decision & Reasons
Promulgated
On 09th March 2022**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**MTH
(anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

**For the Appellant: Mr Greer, Counsel instructed by Ison Harrison
Solicitors**

For the Respondent: Ms Young, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Ethiopia born in 2001. 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 10th May 2019. It was accepted that the Appellant is an Ethiopian of Oromo ethnicity, and that the Competent Authority had recognised the Appellant to be a victim of modern slavery (this related to a period of

forced labour in Libya, when the Appellant was captured by traffickers *en route* to Europe). The Respondent further accepted that the Appellant had given a consistent account of being a supporter of the Oromo Liberation Front (OLF); his claim to have played an active role in a demonstration in May 2016, and to have subsequently been arrested, was accepted, as was his claim to have been detained for 2 weeks and tortured. Importantly, the Secretary of State also accepted that the Appellant had escaped from this detention. All of this supported the Appellant's claim to have a genuine subjective fear of return to Ethiopia.

3. The Respondent was not however satisfied that the Appellant's fear was objectively well-founded. The refusal letter details country background information including the fact that after the Appellant had left Ethiopia the OLF had been removed from the list of designated terrorist organisations; President Abiy Ahmed is himself of Oromo ethnicity and had introduced measures to open up the country and tackle human rights abuses. Finding these developments to be a material change in circumstances since the period that the Appellant faced persecution for his beliefs, the Secretary of State refused to grant protection.
4. The Appellant appealed and the matter came before First-tier Tribunal Judge Hillis on the 28th June 2018. Judge Hillis noted that the historical facts of the claim were not in issue and further accepted that the Appellant had continued to support the OLF, attending meetings in the diaspora in the UK and taking part in Oromo cultural events. The Tribunal directed itself to the then extant country guidance in MB (OLF and MTA – risk) Ethiopia CG [2007] UKAIT and found it to be clear that “if that authority is still good law the Appellant will succeed in his appeal”. The Tribunal was not however satisfied that the findings in MB should continue to be applied in Ethiopian cases. It noted the evidence advanced by the Respondent about the change in approach by the Ethiopian government under Abiy Ahmed, and concluded that this amounted to durable change for the better. It dismissed the appeal on the grounds that there was no current risk of harm for someone in the position of the Appellant.
5. The Appellant was granted permission to appeal to the Upper Tribunal on the 19th August 2019 by First-tier Tribunal Judge Adio.
6. On the 7th January 2021 the matter came before me at Field House for a case management review. In view of the issues in the appeal I decided to stay the matter behind what was to be the new Ethiopian country guidance case of AAR (OLF - MB confirmed) Ethiopia CG [2022] UKUT 1 (IAC).
7. Following that initial hearing the Secretary of State conceded that the First-tier Tribunal had erred in law in its approach. By a Position Statement dated the 8th January 2021 Senior Presenting Officer T

Lindsay accepted that the Tribunal had misdirected itself that the “issue to be resolved” was whether the situation in Ethiopia had significantly improved. The issue was whether *this* claimant continued to be at risk of persecution.

8. The decision in AAR (Ethiopia) was handed down on the 29th December 2021. As the case citation suggests, it affirms the decision in MB and holds that OLF members and supporters will in general be at a real risk of harm.
9. Before me Ms Young conceded that in light of the Appellant’s personal history he must, applying the findings in AAR, be found to be at risk of persecution in Ethiopia. That is a concession rightly made. The headnote to AAR reads as follows:

Country guidance: OLF members and sympathisers (supporters)

- (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?

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.

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. The accepted facts in this case are that the Appellant is a supporter of the OLF who has been detained and tortured in Ethiopia as a result of these political beliefs. In view of those accepted facts Ms Young accepted that applying the new country guidance, the Appellant is a refugee.

Anonymity

12. The Appellant is a victim of trafficking. As such I must make an order for anonymity, having regard to the UTIAC Guidance *Note 2022 No 2: Anonymity Orders and Hearings in Private*. 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.

13. 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”

Decisions

14. The decision of the First-tier Tribunal has been set aside by consent.
15. The appeal is allowed on protection and human rights grounds.
16. The Appellant is a victim of trafficking and as such an anonymity order must be imposed.

Upper Tribunal Judge Bruce
8th February 2022