



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-000681

First-Tier Tribunal No:
PA/53598/2021; IA/09639/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 21st March 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

F S M
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: Ms E Rutherford, counsel, instructed by JD Spicer Zeb Solicitors

For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

Heard at Field House on 28 November 2023

DECISION AND REASONS

INTRODUCTION

1. The appellant is a national of Ethiopia. In January 2013 or 2014 she travelled to Qatar for employment as a domestic servant. In July 2019 she travelled to the UK with the family for whom she worked to continue her employment, with a visa valid until 12 January 2020. The appellant left her employment on 21 September 2019 and subsequently claimed asylum on 21 November 2019. The claim was refused by the respondent on 7 July 2021.
2. The appellant's appeal against that decision was dismissed by First-tier Tribunal ("FtT") Judge Parkes ("the judge") for reasons set out in a decision dated 29 December 2021. In summary, the judge referred to the appellant's account of events in Ethiopia, including her claim that her father was a member of the Welkait Committee, that she was a supporter and that the family home was confiscated and the appellant was detained and raped by government officials. In reaching his decision the judge considered the written and oral evidence of the appellant and a witness that she called who I refer to as SA. The judge also considered an 'arrest warrant' relied upon by the appellant and the content of a medico-legal report of Dr Suleman dated 24 November 2021. At paragraph [31] of his decision, the judge said:

"...taking the evidence overall I am not satisfied, even to the lower standard that the Appellant's account of events in Ethiopia is reliable. I do not accept that the Appellant or her father were politically active or involved in any organisation in Ethiopia."
3. The judge went on to consider the appellant's *sur place* activities in the UK and said, at [33]:

"The Appellant's activities in the UK have been limited and, given what is said above, I find that it is not motivated by a genuine political ideal. However, the question is whether the Appellant's activities would put her at risk on return. The Appellant's activities have not been high profile and with no profile in Ethiopia the suggestion that the Appellant would be known to the authorities through this route is speculative with no support. In the circumstances I find that the Appellant would not be at risk by virtue of her *sur place* activities."
4. At paragraph [34], the judge concluded:

"The situation in Ethiopia is currently in a state of flux with Amharic forces and government forces coming into conflict in parts of the country. However, the evidence does not show that there are no parts of the country that would be safe for the Appellant and the evidence does not show that there is a risk that would reach the threshold for protection under article 15(c). The Appellant has family in Ethiopia and would have support on return. The evidence does not show that the Appellant's circumstances are such that a grant of leave outside the rules under article 8 would be justified."

THE GROUNDS OF APPEAL

5. The appellant claims the findings made by the judge that the appellant was not politically active or involved in any political organisation in Ethiopia, and that her political activities in the UK are not motivated by a genuine political ideal, are contrary to an express acceptance in the respondent's decision, at [57], that the appellant was a supporter of the Welkait committee in Ethiopia.
6. The appellant claims the judge made material errors of law when rejecting the appellant's account of events in Ethiopia. The appellant refers to the report of Dr Suleman which confirms the appellant has poor concentration and poor short-term memory, but the judge does not adequately explain in his conclusion, at [28], why the appellant's diagnosis does not assist her in meeting the points raised in the refusal letter. The appellant claims the judge fails to give adequate reasons for rejecting the evidence of the witness, SA, who corroborates the appellant's account of events in Ethiopia. The witness had been accepted to be credible by the respondent and the judge placed undue weight on the absence of evidence from 'Habte', the person through whom the appellant met SA.
7. The appellant also claims the judge unduly focused upon the absence of background material from an independent source to support the claim as to the existence of a Welkait committee before 2015. The evidence of SA was that there were numerous committees before the establishment of the Welkait Amhara identity Restoration Committee in 2015, and the judge ignored that evidence that comes from an accepted refugee. The appellant claims the absence of reference to a particular committee in the background until one rose to prominence, is not a reason to doubt that such a committee existed, and that others in the local area and the police did not become aware of the committee. The appellant claims the judge fails to give adequate reasons for rejecting the appellant's account of events and erred in concluding that the letter relied upon by the appellant and referred to at paragraph [21] does not support the appellant's claims. The appellant claims that although the two arrests are mentioned separately in the letter, it cannot be implied that the author of the letter is saying that that they occurred at a different times, and thus inconsistent with the appellant's account.
8. Finally, the appellant claims the judge erred in his assessment of the risk arising from the appellant's *sur place* activities. The appellant claims the finding, at [33], that the appellant's activities in the UK are not motivated by a genuine political ideal is contrary to the respondent's concession that the appellant was a supporter of the Welkait committee in Ethiopia. The appellant claims the judge speculates that the appellant will not be known to the authorities because she has attended demonstrations. It is said the judge has not adequately considered the risk that the appellant will be identified through her *sur place* activities that involved her attendance at two demonstrations raising the plight of the Amhara people.

9. Permission to appeal was granted by Upper Tribunal Judge O'Callaghan on 14 August 2023. He said:

“Observing the applicable threshold at the permission stage, I consider the grounds advanced to be arguable – particularly ground 3a – though the appellant’s representatives should properly reassess the merits of the several grounds advanced prior to the error of law hearing.”

THE HEARING OF THE APPEAL BEFORE ME

10. Notwithstanding the observations made by Upper Tribunal Judge O'Callaghan, Ms Rutherford adopts the grounds of appeal and maintains the judge erred for the reasons set out in those grounds.
11. Ms Rutherford submits that in paragraph [57] of the respondent’s decision, the respondent accepted the appellant supported the Welkait committee in Ethiopia. However at paragraph [31] of his decision, the judge said the appellant's claim about events in Ethiopia before she left, stand in isolation and the judge found that even to the lower standard, the appellant's account of events in Ethiopia is unreliable. She submits that contrary to what had already been conceded by the respondent, the judge erroneously found that neither the appellant nor her father were politically active or involved in any organisation in Ethiopia. That Ms Rutherford submits, impacts upon the decision of the judge as a whole because it undermines the judge’s finding that the appellant’s *sur place* activities are not motivated by a genuine political ideal and that the appellant does not have a profile in Ethiopia that would put her at risk upon return.
12. Ms Rutherford submits that as to the events in Ethiopia that the appellant relied upon, the judge referred, at [15] to the diagnosis set out in the medico-legal report of Dr Suleman that the appellant has PTSD. He states the appellant also has symptoms of hyperarousal including anxiety, restlessness, poor concentration and poor short-term memory. In his view, her symptoms have become chronic as over the years she has not had any treatment.
13. Ms Rutherford submits SA has been granted refugee status, albeit she accepts, there was no evidence before the Tribunal regarding the basis of his claim for international protection. She submits the judge noted, at [27], that his evidence supports the appellant’s account of events. She submits the judge failed to give adequate reasons rejecting his evidence. Ms Rutherford submits that at paragraph [4] of his statement SA claimed that information about the arrest of the appellant and her father in 2013 “because of the Welkait politics” was in the public domain and everyone knew about it.
14. Finally, Ms Rutherford submits that in considering the risk upon return because of the appellant’s *sur place* activities, quite apart from the erroneous finding that the appellant and her father were not politically active in Ethiopia, the judge did not adequately consider whether the authorities would know of the appellant’s activities.

15. In reply, Ms Arif submits the judge did not go behind the concession that was made by the respondent regarding the appellant's activities in Ethiopia. The respondent had accepted the appellant supported the Welkait committee in Ethiopia, but rejected the appellant's claim that she had been arrested and detained in Ethiopia for supporting the Welkait committee. Ms Arif submits the judge found that the appellant was not politically active. The appellant was a supporter and it does not follow that she was politically active, in the way that she claimed. Ms Arif submits the judge clearly had in mind the report of Dr Suleman and the diagnosis of PTSD. The judge repeatedly referred to the medical report and at paragraph [30] he recorded that the fact that the appellant has the mental health issues described in the report is not disputed. At paragraph [15] the judge had made it clear that he bears in mind that stress and distress can affect recall, and that a detailed account of events might not emerge at all or be in any particular order.
16. Ms Arif submits that reading the decision as a whole, the judge gave adequate reasons for dismissing the appeal, having considered all the evidence before the FtT in the round. She submits it was open to the judge to conclude that the appellant and her father were not politically active or involved in any organisation in Ethiopia, and that the appellant's *sur place* activities have not been high profile. With no profile in Ethiopia it was open to the judge to find that the appellant would not be at risk upon return on account of her *sur place* activities.

DECISION

17. The focus of Ms Rutherford's oral submissions before me were upon the judge's finding that neither the appellant nor her father were politically active or involved in any organisation in Ethiopia. I reject her submission that the judge went behind a concession made by the respondent in the respondent's decision dated 7 July 2021. The respondent noted in paragraph [9] of the decision that the appellant claims her father was a member of the Welkait committee from 2008 and that she became a supporter of that committee in July 2012. The respondent addressed the appellant's claim that she was a supporter of the Welkait committee in Ethiopia, at paragraphs [48] to [57] of the decision. The respondent noted the appellant was able to give reasons for supporting the group that are consistent with external information that Amhara have been subjected to evictions by state actors in Ethiopia. The appellant was able to articulate the aims of the group and was able to say when the committee was officially established. She had claimed that the committee existed clandestinely before then, and at paragraph [52] of the decision, the respondent noted that is broadly consistent with country information that shows the group filed a petition to the House of the Federation through their representatives seeking recognition in accordance with the Constitution of Ethiopia in 2015. The respondent noted there was no external evidence to demonstrate the group existed officially before 2015. The appellant was able to name the leader of the committee and at least two others in the committee. The respondent also noted that the appellant

was able to detail a demonstration that took place in July 2016. It was because of the appellant's knowledge of the Welkait committee that the respondent accepted that she "supported the Welkait committee".

18. At paragraphs [58] to [73] of the decision the respondent went on to address the claims made by the appellant regarding the events she relied upon in support of her claim for international protection. The respondent noted, at [59], there is no evidence that the appellant's father was an active member of the Welkait committee. The respondent noted the appellant's claim to have attended demonstrations in August 2012 and December 2013 are not supported by background material and referred to the various inconsistencies in the appellant's account of her and her father's arrest in May 2013. The respondent rejected the appellant's claims regarding events in Ethiopia.
19. I accept, as Ms Arif submits, that in context, an acknowledgement by the respondent that the appellant was a supporter of the Welkait committee, is altogether different to the finding made by the judge that neither the appellant nor her father were politically active or involved in any organisation in Ethiopia. The fact that an individual has some knowledge of, and supports an organisation is not to say that the individual is politically active within that organisation. I do not therefore accept that the judge went behind a concession made by the respondent and it was in my judgement open to the judge to reject the appellant's claim that she and her father were politically active in Ethiopia for the reasons set out in the decision.
20. There is in my judgement little merit to the other factors set out in the appellant's grounds of appeal that are maintained.
21. The decision of the First-tier Tribunal judge must be read as a whole. The judge considered the evidence now relied upon by the appellant. In an appeal such as the present, where the credibility of the appellant is in issue, a Tribunal Judge adopts a variety of different evaluative techniques to assess the evidence. The judge will for instance consider: (i) the consistency (or otherwise) of accounts given by the appellant at different points in time; (ii) the consistency (or otherwise) of an appellant's narrative case for asylum with their actual conduct at earlier stages and periods in time; (iii) The consistency or otherwise of the account with relevant background material; (iv) the adequacy (or by contrast paucity) of evidence on relevant issues that, logically, the appellant should be able to adduce in order to support his or her case; and (v), the overall plausibility of an appellant's account. A judge is not required to take at face value an account of facts proffered by an appellant, no matter how contrary to common sense and experience of human behaviour the account may be.
22. It was in my judgement open to the judge to reject the appellant's account of events in Ethiopia for the reasons set out at paragraphs [14] to [31] of the decision. The judge referred, at [13], to the report of Dr Solomon and he approached the appellant's evidence on the basis that she is a vulnerable witness. At paragraph [15], the judge noted the appellant has PTSD. At paragraph [28], the judge clearly had in mind the fact that

the events in question took place many years ago. He said that may explain some of the differences in the dates given by the appellant but cannot explain, other inconsistencies in the appellant's account and the documents relied upon.

23. Ms Rutherford submits that in paragraph [7.2] of his report Dr Suleman set out his opinion that the appellant has a history of previous trauma as she was raped in 2011 and was subjected to torture whilst in police custody in May 2013. At paragraph [30] of his decision the judge noted that it is not disputed that the appellant has the mental health issues as described in the report. The judge said it may be that the appellant was sexually assaulted at some point but the background evidence is to the effect that sexual violence is rife in her home region. The judge did not accept the appellant was assaulted as she claimed. It was plainly open to the judge to note that an untargeted assault could explain the appellant's difficulties.
24. Ms Rutherford accepts that at paragraphs [7.8] to [7.10] of the report, Dr Suleman expressed the view that the appellant's symptoms are mild and will not affect her ability to participate in the hearing of her appeal. In his opinion the appellant should be able to participate in an appeal hearing and give evidence. He did not identify any reasonable adjustments that may need to be made to accommodate the appellant during the hearing.
25. In reaching his decision the judge considered the wide canvas of evidence before the Tribunal, including the evidence of SA, the evidence set out in the letter from 'The Welkait-Tegede Amhara Identity Restoration Committee in Northern Gondar Zone Administration, Amhara region' dated 10 January 2014, and the arrest warrant relied upon by the appellant.
26. The letter from 'The Welkait-Tegede Amhara Identity Restoration Committee in Northern Gondar Zone Administration, Amhara region' dated 10 January 2014 (Ethiopian calendar) refers to the appellant's father having been detained in May 2013 (Gregorian calendar) by the security agents because of his involvement in the Welkait cause, and it is said no one knows his whereabouts. The letter then refers to the appellant having attended 'secret cell meetings', distributing leaflets and attending protests. It is said she was detained in May 2013 (Gregorian calendar) "due to her involvement with her father's committee" and ill treated because of her identity and language. It is said she was released by bribe. The letter is unclear. In her asylum interview, the appellant claimed (*Q.121 and 122*) that her father and his colleagues were arrested at the demonstration in December 2012 (Gregorian calendar). She claimed he had been taken to a police station and released (*Q.123 and 124*). The appellant claimed that she and her father were then arrested in May 2013 (*Q.128 to 131*) because they were attending clandestine meetings. As the judge quite rightly noted, at [21] the letter relied upon by the appellant makes no reference to the appellant's father having been arrested previously in 2012.
27. The judge considered the evidence of SA and it was open to the judge to note that according to SA, information about the arrests of the appellant and her father was widely known and in the public domain, but there is

nevertheless no other evidence to support the claims being made. SA may be a refugee, but that does not make him a country expert and as Ms Rutherford quite properly accepts, there was no evidence before the Tribunal regarding the basis of SA's claim for international protection. Ms Rutherford accepts there was no other evidence before the FtT that information about the arrests of the appellant and her father was widely known locally, or that it was information in the 'public domain' because it is referred to in anything that was published. The judge was equally entitled to have regard to the fact that the appellant and SA claim they met through a person named 'Habte' but there is no evidence from that individual. It is evidence that was readily available.

28. The judge referred to the arrest warrant relied upon by the appellant at paragraph [22] of the decision. The conclusions reached by the judge at paragraphs [22] to [25] of the decision regarding that arrest warrant were plainly open to the judge. In *Tanveer Ahmed v SSHD* [2002] UKIAT 00439 the IAT confirmed that in asylum and human rights cases it is for an individual to show that a document on which he or she seeks to rely can be relied on and the decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round. Judge Parkes carefully considered documents relied upon by the appellant in the round, and it was open to the judge to find that the documents now provided by the appellant are unreliable.
29. I also reject the claim that the judge erred in his assessment of the risk arising from the appellant's *sur place* activities. Having made a finding that neither the appellant nor her father were politically active or involved in any organisation in Ethiopia, it was open to the judge to find the appellant is not motivated by a genuine political ideal and that she would not be at risk on account of her *sur place* activities in the UK. Ms Rutherford quite properly accepted before me that there was no background material before the FtT capable of establishing that the Ethiopian authorities monitor the activities of Ethiopian nationals abroad.
30. I accept the decision of the judge could have been better expressed but the focus should be on the way the judge performed the essence of his task. The Upper Tribunal should not overturn a judgment at first instance unless it really cannot understand the original judge's thought process when the judge was making material findings. Reading the decision as a whole, it is in my judgement clear that in reaching his decision, the judge considered all the evidence before the Tribunal in the round and reached findings and conclusions that were open to him on the evidence. The decision is to be read looking at the substance of the reasoning and not with a fine-tooth comb in an effort to identify errors. Despite the best efforts of Ms Rutherford to persuade me otherwise, it is now well established that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. A fact-sensitive analysis of the risk upon return was required. In my judgement the judge reached a decision that was open to him.

31. It follows that I conclude there is no material error of law in the decision of the FtT capable of affecting the outcome of the appeal and I dismiss the appeal.

NOTICE OF DECISION

32. The appeal is dismissed and the decision of First-Tier Tribunal Judge Parkes stands

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 February 2024