



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

Appeal Number: PA/01165/2015

**THE IMMIGRATION ACTS**

**Heard at Birmingham**

**On 3<sup>rd</sup> October 2018**

**Decision & Reasons**

**Promulgated**

**On 31<sup>st</sup> October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**BIRUK [S]**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms H Naz (Solicitor)

For the Respondent: Mrs H Aboni (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Chohan, promulgated on 11<sup>th</sup> August 2017, following a hearing at Birmingham on 26<sup>th</sup> July 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, a consequence of which, the matter comes before me.

## **The Appellant**

2. The Appellant is a male, a citizen of Ethiopia, and was born on 10<sup>th</sup> May 1992. He appealed against the decision of the Respondent dated 4<sup>th</sup> September 2015, refusing his claim for asylum and for humanitarian protection, pursuant to paragraph 339F of HC 395.

## **The Appellant's Claim**

3. The essence of the Appellant's claim is that his father was a member of the Ethiopian People's Patriotic Front (EPPF). He claims that his father came to the attention of the Ethiopian authorities in October 1998 and he has not been seen since. The Appellant's brother, Tesfaye, was also taken away by the authorities in 1998 and has simply vanished. The Appellant, for his part, was involved also with the EPPF. In 1999, his mother gave him a document to pass on to his father's friend, and this is when his problems began. He later discovered that the documents contained a list of EPPF members. He did not realise he had been followed. He ended up being arrested. He was beaten and tortured. He was forced to confess. He was falsely accused of the murder of another person. He was sentenced to eight years imprisonment. He was then, however, released after five years and six months, following the payment of a bribe by his mother. Upon release the Appellant began work as a minibus driver. He also resumed his political activities with the EPPF. About eight months after that, the Appellant found that a co-worker had been arrested. The Appellant also was on the wanted list. He made arrangements to leave Ethiopia. He travelled through various countries and arrived in the UK on 3<sup>rd</sup> May 2015.

## **The Judge's Findings**

4. The judge held that the Appellant's claim that his problems began when his mother gave him a document which contained a list of EPPF members, to pass on to his father's friend, was lacking in credibility. The Appellant's mother would not have put the appellant at such a risk, bearing in mind that the Appellant's father and brother had disappeared, in circumstances where the Ethiopian authorities were apparently responsible. Indeed, the Appellant was only 14 years of age at the time. Therefore, the risk would not have been taken.
5. Second, the judge found that even whilst making allowance for the fact that the Appellant had been detained as a young boy, his account was vague and lacking in detail. There was no explanation as to why the Appellant's mother did not seek to secure the Appellant's release sooner than after as much as five years.
6. Third, the Appellant submitted documents relating to his detention but these relate to the application for a bail, an appeal, and an application for transfer to a different prison. There was no evidence of the envelope in which the documents were received from Ethiopia. The judge did not find

it plausible that the Appellant would have made an application for bail and an appeal when his mother could have secured his release by the payment of a bribe.

7. Fourth, following his release from detention, the Appellant claims that he continued with his activities with the EPPF in the full knowledge that he was on the watch list. In fact, since arriving in the UK, the Appellant claims he has been aware that he is at risk and that the Ethiopian authorities know he is in the United Kingdom. He knows this because the Appellant claims to have received a letter from a friend's sister in Ethiopia. During his oral evidence, the Appellant stated that his friend had been captured by the Ethiopian authorities and he was still in custody. However, while in custody the Appellant's friend managed to instruct his sister to write a letter and send it to the Appellant. The judge found this to be lacking in credibility.
8. Finally, the Appellant's claim was that he was a member of the EPPF in the UK. He claimed to have attended demonstrations. This he did in Manchester and in Birmingham. These were his sur place activities. He provided a letter dated 19<sup>th</sup> April 2016 from the EPPF in the United Kingdom. He provided membership documentation and photographs. He also provided a statement from a witness. In his own evidence the Appellant stated he attended demonstrations and meetings. According to the letter from the EPPF it is stated that the Appellant "is named as a head of cultural affairs ... in the United Kingdom" but the Appellant himself makes no mention of this either in his oral evidence or in his witness statement. The letter also states that the Appellant "was a supporter to our movement while in Ethiopia" but the author of the letter does not state how he came to know of this. The judge did also have regard to the photographs and took the view that they do not take the matter any further because they depict no placards and no signs and there are no distinguishing features on the photographs (see paragraphs 11 to 14).
9. The judge dismissed the appeal.

### **Grounds of Application**

10. The grounds of application are detailed and comprehensive. They state that the judge failed to take into account the court documents. He failed to take into account a DVD screenshot (see paragraph 9). They also state that the YouTube link regarding the Appellant's activities in the UK was also not considered by the judge. In essence, it is said that "no finding at all has been made as to the Appellant's court documents or the YouTube evidence. These documents directly assist the Appellant's credibility aspect as they corroborative his claim in full and would have assisted the IJ..." (paragraph 7). It is also said that the judge placed no weight on the letter sent by the EPPF in the UK and that "this is an authentic document" that should have been considered.

11. Following the refusal of permission on 8<sup>th</sup> November 2017 by the First-tier Tribunal, permission to appeal was granted by the Upper Tribunal on 9<sup>th</sup> January 2018 on the basis that it was arguable that the judge had not considered the material evidence (YouTube video and court documents) which was relevant.
12. On 6<sup>th</sup> February 2018 a Rule 24 response was entered to the effect that the judge set out the reasons for rejection of the Appellant's claim, particularly in relation to the *sur place* activities, at paragraphs 14 to 15 of the determination. There was no error of law.

### **Submissions**

13. At the hearing before me on 3<sup>rd</sup> October 2018 Ms Naz, appearing on behalf of the Appellant, relied on the grounds of application. She said that she could do no better than simply draw the Tribunal's attention to these grounds which were fulsome and detailed.
14. For her part, Mrs Aboni relied upon the Rule 24 response. However, she went on to further state that the grounds of application were misconceived. The fact was that there was no DVD evidence before the judge at all. This is clear, submitted Mrs Aboni, from the Presenting Officer's hand-written notes on the date of the hearing before Judge Chohan. These state that there had been an application before the Tribunal on that day for an adjournment on the basis that the DVD, which transcribed the YouTube evidence, which was now being prayed in aid, was with a previous firm of solicitors, who had been dis-instructed to proceed with the Appellant's claim. The present solicitors had applied for this DVD evidence to be transferred to them so that it would be put forward as evidence on the Appellant's behalf. Therefore, the plain fact was that there was no such evidence. What did exist was the form of screenshots of the DVD, and the YouTube evidence that was being referred to. These screenshots were indeed considered by the judge.
15. At this point, Ms Naz accepted that she now had a copy of the DVD, which she held up for the Tribunal to see, and she also accepted that it contained the YouTube evidence, as transcribed onto the DVD, which was going to be referred to had the adjournment been granted. Mrs Aboni continued to say that it was not true that the judge had failed to consider the fact of the Appellant's arrest, because this was expressly done at paragraph 9 of the determination where the judge stated that, "the Appellant has submitted documents relating to his detention" and these were taken into account, with the judge then giving no less than three reasons for why the claim was unsustainable.
16. In relation to the Appellant's *sur place* activities, these were considered at paragraphs 12 to 13 of the determination, with the judge dealing with the Appellant's claim that he was a member of the EPPF in the United Kingdom.

17. In reply, Ms Naz submitted that the judge had failed to take into account the photographs and the supplementary evidence, and if he had done so, he had not done so in sufficient detail. The judge had said that, “the photographs do not take the matter any further” (paragraph 14). She submitted that the photographs did indeed take the matter further and the judge was wrong to have concluded otherwise.
18. At the end of the submissions, I asked Ms Naz what her strongest point was in relation to the claim that Judge Chohan had erred in law. She submitted that the failure to consider the YouTube evidence was the high point of the challenge today.

### **No Error of Law**

19. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
20. First, in what is a clear, succinct and wholly comprehensive determination, the judge does consider practically every relevant aspect of the claim put forward on behalf of the Appellant. It is not the case at all that the judge failed to heed the YouTube evidence. Any suggestion to the contrary (whether deliberate or inadvertent) is misleading. As Ms Naz has herself conceded, after Mrs Aboni had drawn attention to the Presenting Officer’s notes of the hearing before Judge Chohan on 26 July 2017, the YouTube evidence did not actually exist, because its transcription onto a DVD was evidence that was in the possession of previous solicitors and there had been an application for an adjournment on that day. What did exist before the judge, and Judge Chohan made this clear, was the screenshot evidence, which he said he could look at equally as well, without granting an adjournment. This he did do. Therefore there was simply no material point to argue here.
21. Second, insofar as there is other evidence, the judge plainly has express regard to this. He gives specific regard to the letter dated 19<sup>th</sup> April 2016 from the EPPF. He gives specific regard to the membership documentation. He specifically looks at the photographs (see paragraph 12). He then rejects the letter from the EPPF by giving clear and comprehensible reasons for why the letter was simply not credible (see paragraph 13). When the judge states that, “the photographs do not take the matter any further” (paragraph 14), it is not the case, as Ms Naz submits, that this is an error, because the very next sentence goes on to show, in the words of the judge, that “the photographs depict no placards and no signs. Furthermore, there are no distinguishing features in the photographs to suggest the Appellant is undertaking activities for the EPPF or for any other group” (paragraph 14). In short, the findings reached by the judge were those which were entirely open to him. There is simply no error of law in this determination.

### **Notice of Decision**

There is no material error of law in the original judge's decision. The determination shall stand.

The appeal is dismissed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

22<sup>nd</sup> October 2018