



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04018/2015

THE IMMIGRATION ACTS

Heard at Manchester CJC
On 23 October 2018

Decision & Reasons Promulgated
On 01 November 2018

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

MS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Daley-Medlock, Counsel

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. The appellant has appealed against a decision of First-tier Tribunal ('FTT') Judge Watt dated 4 July 2016, in which he dismissed his appeal against a decision dated 7 December 2015 to refuse to grant him asylum.

Summary of asylum claim

2. The appellant, a citizen of Ethiopia, fears that he will be persecuted upon return to Ethiopia because of his: (i) past involvement in the Oromo Liberation Front ('OLF') and his arrest and detention for this reason whilst in Ethiopia in 2013 and; (ii) sur place activities in the UK with the OLF.

Appeal proceedings

3. The FTT regarded the appellant as an incredible and unreliable witness and did not accept that he supported the OLF or that he was arrested as claimed when in Ethiopia. The FTT was not satisfied that the appellant is genuinely Oromo and notwithstanding supporting evidence from Dr Berri, the leader of the OLF in the UK, did not accept that he was a supporter of the OLF. The FTT therefore dismissed the appellant's appeal on asylum grounds.
4. In renewal grounds of appeal to the Upper Tribunal ('UT') it was submitted that in rejecting the appellant's sur place claim, the FTT erroneously considered the genuineness of his claimed Oromo ethnicity to be relevant and failed to apply the country guidance in MB (OLF & MTA - risk) Ethiopia CG [2007] UKAIT 00030. The headnote includes the following:

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

- (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.

(3) Given the proscription of the MTA and the current state of tension on the part of the Ethiopian authorities, the Tribunal considers that MTA members will also be at real risk on return if they have previously been arrested or detained on suspicion of MTA membership and/or of OLF membership or are known or suspected of membership of the MTA. Despite the banning of the MTA, the Tribunal does not consider that the evidence is such as to show a real risk where the extent of the authorities' knowledge or suspicion about an individual relates to something less than membership of the MTA."

5. On 25 August 2016 the UT granted permission to appeal on the basis that the FTT did not arguably address prospective risk in light of the appellant's sur place activities and did not adequately consider whether he would be perceived as an OLF sympathiser in accordance with MB. Permission to appeal was neither sought nor granted in relation to the FTT's disbelief of the appellant's account whilst in Ethiopia. That means there has been no appeal against the factual finding that the appellant was not an OLF member or sympathiser.
6. On 27 January 2017 UT Judge Latter heard the appeal, but there was no appearance by the appellant or his representatives. He dismissed the appeal in a decision dated 17 February 2017. However, as the Rt. Hon. Sir Stephen Silber observed when granting permission to appeal to the Court of Appeal on 20 June 2018, the appellant and his representatives did not receive notice of the UT hearing. In the circumstances, in an order dated 3 August 2018 the matter was remitted by consent to the UT, for the decision to be remade.

UT hearing

7. Mr Daley-Medlock relied upon the renewal grounds. He focussed his attention on the FTT's failure to consider the prospective risk to the appellant in light of his sur place activities, even if they were not genuinely undertaken. I invited Mr Daley-Murdock to address me on Judge Latter's observation that this failure could not be said to be material because there was insufficient evidence that these activities would become known to the Ethiopian authorities. Mr Daley-Medlock submitted that it was inevitable that the appellant would be questioned about his political activities as an undocumented returnee and his sur place activities would therefore reach the attention of the Ethiopian authorities. He was unable to take me to any country background evidence to support this submission.
8. Mr Tan relied on a rule 24 notice and the reasons provided by Judge Latter to support the SSHD's position that any error was not a material one.
9. After hearing from both representatives, I reserved my decision which I now provide with reasons.

Discussion

10. The FTT did not accept the credibility of the appellant's account that he had been arrested in Ethiopia on suspicion of OLF involvement. In addition, there was no credible evidence of the appellant having a "significant history" of OLF involvement. The FTT found an absence of any involvement in Ethiopia. The limited evidence of sur place OLF activities summarised by the FTT at [11] could not on any legitimate view be described as giving rise to a "significant history" of OLF involvement, particularly when the FTT found that the appellant was unable to speak the language used by the organisation and was not an Oromo.

11. Paragraphs 1 and 2 of the head note in MB provide that OLF sympathisers and those perceived as such, are at risk “if” they “have been previously arrested or detained on suspicion of OLF involvement” or have “a significant history, known to the authorities, of OLF membership or sympathy”. The FTT clearly found that the appellant had not been arrested or detained on suspicion of OLF involvement. Although the FTT did not clearly address the possible risk posed to the appellant by reason of his sur place political activities, the FTT adequately reasoned that the appellant was not a genuine supporter or sympathiser of the OLF. I entirely agree with Judge Latter’s reasoning at [18] in this regard and the proposition at [19] that the FTT would have erred in law if it took the view that only genuine activities would enable a sur place claim to succeed. As Judge Latter observed activities undertaken in bad faith can found a sur place claim but careful attention must be given to whether those activities are likely to come to the attention of the authorities on return – see the reasoning in YB (Eritrea) v SSHD [2008] EWCA Civ 360 and MB. There was no evidence of any credibility or substance that the appellant’s limited sur place activities would be “known to the authorities”. Mr Medley-Daley’s submission that this information would be revealed upon questioning is unsupported by any evidence and constitutes mere speculation.
12. Although the FTT did not consider as clearly as it should have the risk by reason of the appellant’s sur place activities and did not direct itself to the country guidance decision of MB, the FTT did not commit any material error of law. The appeal could not succeed on any legitimate view given the absence of any evidence that the appellant had a “significant history” of OLF sympathy or even if he did, that this would be “known to the authorities”.

Decision

13. The FTT decision did not involve the making of a material error of law and I do not set it aside.

Signed:

UTJ Plimmer
Ms M. Plimmer
Judge of the Upper Tribunal

Date:
23 October 2018