



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

Appeal Number: PA/05306/2017

THE IMMIGRATION ACTS

Heard at Field House

On 5 March 2018

**Determination & Reasons
Promulgated
On 23 March 2018**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**T K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Karnik, instructed by Paragon Law

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Ethiopia. She appealed to a Judge of the First-tier Tribunal against the respondent's decision of 19 May 2017 refusing her application for asylum and for humanitarian protection.
2. The appellant claimed to be at risk on return to Ethiopia on account of fear of ill-treatment on the basis of her Oromo ethnicity and the fact that her father and brother had been involved in the Oromo Liberation Front.

3. The judge accepted that the appellant is Ethiopia and of Oromo ethnicity and also that her father and brother had come to the attention of the authorities in Ethiopia as a result of their activities in relation to the OLF and that it could properly be said that the appellant was a sympathiser with the aims of the OLF. The judge went on otherwise to accept that the appellant had not in the past nor would she in the future be likely to be engaged in OLF activities. The judge attached weight to the fact that the appellant had not taken steps to be involved in OLF activities until after her asylum interview and was of the view that her credibility was damaged by the fact that she did not claim asylum in Italy or France before arriving in the United Kingdom. The appeal was dismissed under the Refugee Convention and under the Human Rights Convention.
4. The appellant sought and was granted permission to appeal on the basis that the judge had failed to factor into his findings that the appellant had been concluded by the competent authority to be a victim of trafficking and this was of relevance to the credibility findings in that for a period after she arrived she was and remained to a degree under the control of the traffickers and that was of particular relevance to the eight month period after her arrival.
5. In a Rule 24 response received on 1 February 2018 the Secretary of State accepted that the First-tier Tribunal had failed to engage with the findings of the competent authority and to engage with the degree of control exerted over the appellant by her traffickers at material times when assessing credibility. As a consequence, the respondent requested that the matter be remitted to the First-tier Tribunal for a de novo hearing.
6. The discussion before me centred around whether any of the findings of the judge were to be preserved.
7. Mr Karnik argued that the findings at paragraph 18, where the judge accepted that the appellant's father and brother had come to the attention of the authorities in Ethiopia as a result of their activities in relation to the OLF and the finding at paragraph 20 that the appellant could properly be regarded as a sympathiser with the aims of the OLF, were to be preserved. Mr Karnik argued that the decision could be divided between the appellant's activities and circumstances in Ethiopia and her activities and circumstances in the United Kingdom and the latter had a bearing on the former on return. There was a sensible division between the two and the separation was appropriate and it also focused the attention of the judge on moving forward.
8. Ms Everett argued that the Rule 24 response had conceded the impact of the appellant being a victim of trafficking, not having properly been factored in by the judge. If the positive findings had to be factored in, on the grounds suggested that it could not be adverse that the appellant had failed to claim early as she was being trafficked, and it could be she could not do anything independently. If it was a question perhaps of the judge

not having grasped the fact of the appellant being trafficked then the findings could be preserved as she could be found to be at risk. The well-reasoned negative credibility findings were nothing to do with the trafficking point. The court was being asked to say that if the decision was flawed with respect to credibility that other findings be preserved.

9. Mr Karnik argued that there was a logical separation and it made sense to preserve the positive findings and the respondent was saying that there should be a de novo right to preserve negative findings in the circumstances.
10. I reserved my decision.
11. It is clear that this appeal is to be remitted for rehearing in the First-tier Tribunal, and the only outstanding issue is whether any of the findings of the judge are to be preserved. The findings on the appellant's nationality and ethnicity are uncontroversial, and there is no reason for them not to be preserved.
12. It is the case that in the decision letter the respondent said as follows at paragraph 43:

"Taking all of the above in the round, it is considered that your account of being linked to the OLF is internally inconsistent and lacking in detail. You have not shown any evidence of being personally linked to the OLF, nor have you substantiated a link between the OLF and your family with firm details. This is therefore rejected."
13. It was common ground that the judge's decision was flawed on the basis that the findings of the competent authority had not been engaged with and the judge had failed to take into account the degree of control exerted over the appellant by her traffickers at material times when assessing credibility. This is clearly a matter of materiality to the credibility findings.
14. It does not seem to me however that the positive findings with regard to the appellant's father and brother and her being a sympathiser with the aims of the OLF are similarly affected. There was no challenge made by the Secretary of State to those findings, and it seems to me that in principle, where positive findings have been made by a judge in a decision which otherwise falls to be reconsidered, the appellant should retain the benefit of those findings unless there is good evidence for her not to do so. I do not think it has been shown that it was not open to the judge to find as he did in relation to those two points, nor that those findings are in any sense infected by the flawed findings in relation to the matters set out above. Accordingly, the findings that I have set out above will be preserved and otherwise the matter will go for a rehearing before a different judge in Birmingham. There will need to be an Oromo interpreter and the appeal will be listed for half a day.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

A handwritten signature in black ink, appearing to be the name 'Allen', written in a cursive style.

Signed

Date

Upper Tribunal Judge Allen