



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12416/2017

THE IMMIGRATION ACTS

Heard at Field House
On 2 July 2018

Decision & Reasons Promulgated
On 13 July 2018

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**G A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Ali, instructed by UK Law
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Ethiopia, has permission to appeal the decision of Judge Mitchell of the First-tier Tribunal sent on 17 January 2018 dismissing his appeal against the refusal made by the respondent on 9 November 2017 of his protection and human

rights claim. The judge accepted that the appellant was a very low-level supporter of Patriotic Ginbot 7 but that he had not given a credible account of detention or active interest in him by the Ethiopian authorities.

2. The written grounds cited that the judge failed to make clear and reasoned findings on the evidence and did not adequately consider the objective evidence or explain why he did not. It was submitted that the judge fell into material error “in failing to address risk to the appellant as a result of being returned to Ethiopia, knowing that the appellant belongs to a clandestine organisation where followers [are] labelled as terrorists by the Ethiopian regime”. Ms Ali in oral submissions submitted that in addition to the failure of the judge to address the background country evidence there was an important failure to address the evidence of one of the two witnesses who attended. In addition, in relation to the witness who did give evidence, Ms ET, the judge wrongly attached no weight to the fact she had been granted refugee status on very similar facts.
3. Rather than track through the written grounds which are relatively vague, I shall extract and address what appear to be the main points relied on.
4. I should mention before doing so that the written grounds made mention of the judge’s reference to the appellant being a supporter of “AG7” rather than “PG7” (Patriotic Ginbot 7) and the judge who granted permission flagged this as one issue. However, Ms Ali accepted that the appellant himself in his interview had referred to AG7 and that nothing turned on the difficult acronyms. I observe that at paragraph 5 the judge noted that the Ginbot 7 party was referred to at various times as AG7 and that “no confusion arose as a result of this”. In the background evidence there is also reference to Ginbot 7/AGUDM). I shall refer to PG7 for convenience.
5. The first main point relied on concerns the judge’s treatment of the background country evidence. I find this ground has no arguable merit. The judge’s decision makes clear that he had read all the documents the parties had placed before him. Ms Ali contends that if the judge had given proper consideration to the background evidence he would have seen that it was accepted by the respondent that even low-level supporters of PG7 were at risk. There are two fundamental problems with this submission. The first is that the appellant’s representative at the hearing conceded that if the appellant was a very low-level supporter of this body, he would not be at risk. At paragraph 36 the judge stated:

“Having considered the evidence including the interview record and the appellant’s statement I conclude that the appellant has not shown that he is a member/supporter of AG7 but is merely a very low-level supporter. Both parties agreed that as a result that the appellant would therefore not be at risk of returning to Ethiopia because of his political activity. I therefore dismiss the appellant’s appeal under the refugee convention.”

6. Ms Ali stated that the appellant contends he had not instructed his representative (Ms Morjaria, of UK Law) to make such a concession but accepted she had seen nothing from Ms Morjaria taking issue with what the judge recorded at paragraph 36 and the written grounds raise no concern about it either.
7. The second fundamental problem is that Ms Ali seeks to rely on the point that the Home Office's own guidance (which was in the documents before the judge) accepts that low-level supporters are at risk. However, that does not square with a proper reading of the relevant document, the Country Policy and Information Note (CPIN) Ethiopia: Opposition to the government, October 2017. It is true that at 2.3.12 this Note states:

“Anyone who is a member or perceived to be a member of one of the three opposition groups designated as terrorist organisations (the OLF, ONLF or Ginbot 7/AGUDM) – or other ethnic-based violent groups – may be subject to surveillance; harassment; arrest and imprisonment, where they are at risk of incommunicado detention torture and other abuses, or even extra-judicial killing. This may also extend to supporters of these organisations or those who the government suspects of being supporters. The government has used perceived or actual support of the OLF, or their objectives, as a means of suppressing political opposition (see armed opposition groups).”

(In the above passage Ms Ali relies on the words “may also extend to supporters...”.)

8. However, this has clearly to be read together with 2.3.18 which states:

“Decision makers must determine if someone is likely to come to the authorities' attention because of activities or association that would be likely to give rise to suspicion that they are involved with or support the OLF, ONLF or AGUDM, or other ethnic-based designated group. The onus is on the person to demonstrate this based on their profile and past experiences, including any arrests and political activities, and that they would be subject to treatment amounting to persecution or serious harm.”
9. These passages make clear that the fact that someone is a supporter of PG7 is not enough in itself to establish risk as decision-makers must go on to determine whether the activities or associations of the person concerned would give rise to risk (2.3.18). Furthermore, this guidance also relies on Upper Tribunal country guidance in **MB (OLF and MTA - risk) Ethiopia CG [2007] UKAIT 00030** stating in another subparagraph that since then “the country situation has not significantly changed”. The Tribunal country guidance does not accept that low-level supporters of opposition groups of any kind would be at risk.
10. Ms Ali's second main point concerns the judge's failure to deal with the evidence of the appellant's second witness who was tendered for cross-examination at the hearing, namely Mr S. However, this point was not raised in the written grounds and in my

judgement cannot be raised now. In any event, I do not consider it is sufficient to establish an error of law. The judge can be criticised for not specifically referring to this man's witness statement, but having looked at its contents I do not consider that it was essential for the judge to have specifically addressed it because this witness, beyond confirming that he knew that the appellant was a supporter of PG7 (which is not disputed) and that he provided him with information about human rights violations in Ethiopia, has no direct knowledge of anything adverse said to have happened to the appellant (he said he learnt of the appellant's (claimed) arrest through his wife in 2014). Given the judge's extensive examination of the state of the evidence relating to the appellant's claimed detention in 2014/2015 and the police's active hunt for him in mid-2017, I do not consider this witness's evidence could have made any material difference and was not specifically relied on by the appellant's representative in closing submissions.

11. Ms Ali's third main point concerns the judge's treatment of the evidence of Ms ET: Once again, there is absolutely no issue identified in the written grounds regarding this point and I do not consider it right for it to be raised now. In any event, I do not think it made out. At paragraph 24 the judge wrote:

"There is some support as regards his membership of the group in that EAT attended court and adopted her statement that appears at pages 28-29 of the appellant's bundle as being true and accurate. She is an Ethiopian citizen who also claims to be a supporter of AG7. She does not claim to be a member of the party. She was a member of a secret cell. It is somewhat unclear as to how she was aware of the appellant if the membership of each of the cells was secret. She was in a different cell to the appellant. She claims she met him at a (sic) AG7 meeting during August 2017 in the United Kingdom. They had been in contact until January 2007 and this witness also left Ethiopia in April 2017. She has been granted refugee status in the United Kingdom with effect from 23 November 2017."

12. Ms Ali submits that the appellant's and Ms ET's factual situations were on all fours and yet whereas the respondent and the judge refused him, she was granted refugee status. However, Ms ET gave very limited information in her witness statement and oral evidence as to the details of her asylum claim and it is no more than speculation to say she was granted refugee status simply because the respondent accepted she had been involved in a mission in Ethiopia to raise awareness of PG7. Furthermore, her evidence fails to make clear (as the judge noted) how the two knew about each other if their cells were secret or why their respective cell leaders would have introduced them. The judge was fully entitled, taking the evidence as a whole, to find that this witness's evidence, whilst providing support of the appellant's membership of a cell and of his being a supporter of PG7, did not establish that the appellant was anything more than a low-level supporter of PG7.

Notice of Decision

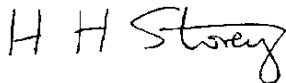
For the above reasons, I conclude that the grounds fail to disclose a material error of law and accordingly the decision of Judge Mitchell to dismiss the appellant's appeal must stand.

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 his 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.

Signed:

Date: 10 July 2018

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a loop at the end of the last name.

Dr H H Storey
Judge of the Upper Tribunal